
Appeal Decision

Site visit made on 20 September 2016

by Elaine Benson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 3 November 2016

Appeal Ref: APP/W1850/W/16/3150919

The Fodder Store, Boat Lane, Whitbourne, Worcester WR6 5RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Clifford Poultney against the decision of the County of Herefordshire District Council.
 - The application Ref 153349, dated 12 November 2015, was refused by notice dated 28 January 2016.
 - The application sought planning permission for conversion of a cottage annexe to provide one bedroom accommodation without complying with a condition attached to planning permission Ref DCNC2004/2013F dated 29 July 2004.
 - The condition in dispute is No 4 which states that: The premises shall be used for holiday accommodation and for no other purpose (including any other purpose in Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).
 - The reason given for the condition is: The local planning authority wish to control the specific use of the land/premises, in the interests of local amenity.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of a cottage annexe to provide one bedroom accommodation at The Fodder Store, Boat Lane, Whitbourne, Worcester WR6 5RS in accordance with the application Ref 153349, dated 12 November 2015, without compliance with condition number 4 previously imposed on planning permission Ref DCNC2004/2013F, dated 29 July 2004 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
 - 1) The ground floor and first floor windows in the gable end adjacent to the boundary with the Olde Rectory's garden shall be kept permanently obscurely glazed and fixed shut in accordance with a scheme of works that has been approved in writing with the local planning authority. The approved works shall be carried out prior to the first occupation of the building as a residential dwellinghouse.
 - 2) The development hereby permitted shall begin not later than 3 years from the date of this decision.
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Preliminary matters

2. The site address given on the original planning application form and in the Council's correspondence is Church Road. It has since been clarified that Boat Lane which is used in the heading above and in a previous appeal decision is the correct address of the Fodder Store.
3. Since the determination of the appeal application, the emerging Whitbourne Neighbourhood Development Plan (NDP) has progressed. It is at the referendum stage which is programmed for November 2016.

Application for costs

4. An application for costs was made by Mr C Poultney against the County of Herefordshire District Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is whether the disputed condition is reasonable or necessary having regard to the living conditions of a) neighbouring occupiers in terms of privacy and overlooking and b) future occupiers of the Fodder Store in respect of an adequate outlook.

Reasons

6. The Fodder Store is a former annexe attached to the Olde Rectory. Both are Grade II listed and stand within the Whitbourne Conservation Area. Planning permission was granted in 2004 for the conversion of the Fodder Store to a 1 bedroom holiday cottage. Condition 4 was imposed to retain the cottage as holiday accommodation. The buildings are now in separate ownership and this appeal seeks to remove Condition 4 to allow the unit to be occupied independently as a self-contained dwelling. The Council raises no objection in principle on development plan policy or other grounds to the change of use from holiday cottage to residential use. This decision therefore focuses on the main issue in dispute which is set out above.
7. A similar application to remove Condition 4 was refused and an appeal was dismissed in August 2015¹. In that decision the Inspector found that there would be sufficient garden space for an unrestricted residential use. However, there are clear glazed windows on the boundary between the 2 properties and he concluded that a residential use would lead to a greater degree of overlooking of the Olde Rectory garden than would occur if the premises were to be occupied as a holiday cottage. I agree with this conclusion.
8. In the earlier appeal the appellant had proposed the imposition of a condition requiring the glass in these windows to be obscured to overcome overlooking concerns. However the Inspector concluded that such works required listed building consent. The appellant has since gained listed building consent for the application of a translucent film to the boundary windows in the lounge and bedroom. These works had been carried out when I conducted my site visit.
9. I observed that the film applied to the windows has removed any views of the garden of the Olde Rectory from within the Fodder Store. However, there are additional windows in the affected rooms which provide a satisfactory outlook

¹ APP/W1850/W/15/3016568

to other external areas. The appellant's evidence indicates that the film reduces the light passing through the windows by 22%. There is no reason to dispute the manufacturers' information. As the other windows also allow for adequate levels of light to reach the lounge and bedroom I am satisfied that the film has not reduced the light levels to a degree that would harm the living conditions of any future residential occupiers of the Fodder Store.

10. However, the overlooking of the neighbouring property has not been entirely overcome by the application of the film because the windows on the shared boundary can be opened. In my view the degree of overlooking of the Olde Rectory garden which remains, along with the neighbours' perception of being overlooked, continue to be unacceptable. I do however agree with the previous Inspector that oblique and difficult to obtain views from the high level bathroom window in the eastern elevation would prevent any overlooking of the nearest part of the Olde Rectory's garden.
11. In the earlier appeal decision the Inspector concluded that the evergreen Yew trees close to the eastern boundary screened views from the upper floor bedroom window of the Fodder Store. Whilst this is currently the case, in my experience trees can fail or be felled for a number of reasons, including disease or nuisance. Furthermore, it is not entirely clear whether the Inspector was aware that these windows could be opened, increasing the opportunities for overlooking. For these reasons I take a different view to the previous Inspector and consider it more appropriate for mitigation measures to be directed towards the windows themselves, including the bedroom window, rather than relying on the continuing presence of trees which are in any event outside the appeal site boundary.
12. To address these concerns the appellant suggests that a condition could be imposed to require the windows either to be fixed shut or their opening restricted by measures such as providing a window stay. I have given careful consideration to this suggestion and in my judgement only windows which are permanently fixed shut would overcome the overlooking concerns. This could be achieved without affecting the amenities of future occupiers as there are other opening windows which would provide ventilation. Furthermore, in my experience a method of fixing the windows shut could be found which would not harm the character or appearance of the listed building. The condition would also be enforceable. For these reasons I have imposed an additional condition requiring the relevant details to be submitted to the Council for approval.

Conclusion on the main issue

13. Subject to the imposed condition requiring the retention in perpetuity of obscurely glazed, fixed shut windows and for the works to be carried out prior to the first residential occupation of the building, I conclude that the living conditions of future occupiers of the Fodder Store and the neighbouring occupiers of the Olde Rectory would be safeguarded and compliance with Condition 4 is not required.
14. Thus there would be no conflict with Policy SD1 of the Herefordshire Local Plan Core Strategy 2011-2031 (CS) which addresses sustainable design and energy efficiency. This policy is wide-ranging and among other things seeks to safeguard residential amenity for existing and proposed residents. Out of the policies referred to it is my view that Policy SD1 is the local policy most

relevant to the main issue in this appeal. Its objectives are consistent with Paragraph 17 of the National Planning Policy Framework which states that planning should always seek a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

15. I have had special regard to the statutory duties relating to listed buildings and conservation areas. I am satisfied that there would be no external alterations to the Fodder Store which would harm its character or appearance as a result of this decision. The listed building and its setting would be preserved, as would the character and appearance of the Whitbourne Conservation Area, and there would be no harm to the significance of the designated heritage assets. Consequently there would be no conflict with CS Policy LD4 *Historic environment and heritage assets* or the emerging NDP Policy LU3 *Conservation Area*.
16. Planning permission was granted in 2010 to remove Condition 4 to enable the use of the Fodder Store as annexe accommodation for the Olde Rectory. Notwithstanding the differing opinion of neighbouring occupiers, it is not disputed by the main parties that this permission remained unimplemented, despite a 2013 approval for its renewal. The Council and the previous Inspector dealt with the previous application and appeal on the basis of its holiday cottage use and I have taken the same approach.
17. Neighbouring occupiers, the Parish Council and other local residents make a number of comments, most of which are addressed above. In addition, this appeal application is materially different from those that preceded it and it fell to be determined. However, because of similarities between the proposals, the previous appeal decision is material to my decision. The Council raised no objections on the basis of increased traffic generation or noise. Having regard to the limited residency controls imposed on the original planning permission there are no convincing reasons to disagree. Matters of enforcement are appropriately dealt with by the Council. Having considered all of the other points raised in this appeal I find that that they are not determinative. This appeal turns principally on the main issues set out above.
18. The Council indicate that emerging NDP Policy LU1 places the application site outside the settlement boundary for Whitbourne. There is no indication from the Council that the NDP's provisions would be applicable to the detailed site specific matters which are in dispute in this appeal. Furthermore, the appeal proposal is not for new-build development in the open countryside or on agricultural land, but relates to the removal of a condition attached to a conversion of a rural building which is supported in principle by the NDP. Indeed 4 converted dwellings at the "Old Rectory" are referred to in the Plan's Appendix A: *Housing Needs*.
19. The appellant's concerns about the processing of the appeal applications and comments made by the Parish Council and local residents are more appropriately addressed by other complaints procedures. This decision has been based upon planning considerations.

Elaine Benson

INSPECTOR