
Appeal Decision

Site visit made on 8 November 2016

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

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

Decision date: 16 December 2016

Appeal Ref: APP/W1850/W/16/3157038

17 Tower Hill, Bromyard, Herefordshire HR7 4DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Mark Yarnold of Manor Developments (TW) Ltd against the decision of Herefordshire Council.
 - The application Ref 153591, dated 2 December 2015, was refused by notice dated 16 June 2016.
 - The application sought planning permission for the erection of a new dwelling including demolition of garage and small outbuilding without complying with a condition attached to planning permission Ref P141725/F, dated 29 September 2014.
 - The condition in dispute is No 2 which states that: the development shall be carried out strictly in accordance with the approved plans (drawing nos. 1761-2A, 1761-3 and 1761-4), except where otherwise stipulated by conditions attached to this permission.
 - The reason given for the condition is: To ensure adherence to the approved plans in the interests of a satisfactory form of development and to comply with Policy DR1 of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new dwelling including demolition of garage and small outbuilding at 17 Tower Hill, Bromyard, Herefordshire HR7 4DF in accordance with application Ref 153591 made on the 2 December 2015 without compliance with condition number 2 previously imposed on planning permission Ref P141725/F dated 29 September 2014 but subject to the conditions in the attached schedule.

Preliminary Matters

2. Section S73 applications are commonly said to be seeking to vary or remove conditions to which an existing permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal or non-determination) succeed, a completely new permission is created that stands alongside the original and the applicant or appellant is able to choose which is implemented. As the original permission was for the erection of a new dwelling including demolition of garage and small outbuilding I have used this description in the formal decision and banner heading.
 3. Drawing No 1761-2A and 1761-3B are cited in the Council's Officer Report. The Council have confirmed that the reference to drawing 1761-2A is a typographical error and that the location plan cited is 1761-1A. I have been provided with a copy of drawing 1761-3B and have dealt with the appeal on the basis of the submitted drawings.
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4. Both parties have brought to my attention a subsequent planning application¹ and drawing No 1761-101B which contains an amended version of the proposal. As this drawing formed part of a subsequent planning application all the interested parties will have had the chance to comment on it. Consequently, no party would be prejudiced by my consideration of it and I have included it within my reasoning below.

Main Issue

5. Planning permission has been granted for a dwelling and it is substantially complete. The dwelling has not been constructed in accordance with the approved plans. The main issue is the effect of retaining the development on the character and appearance of the Bromyard Conservation Area (BCA) and the setting of 17 Tower Hill, a grade II listed building.

Reasons

6. The appeal property is a 1.5 storey dwelling that has recently been constructed within BCA and on land to the rear of 17 Tower Hill (No 17). The dwelling faces onto Linton Lane which forms the boundary of this part of BCA. The listed building is faced in roughcast render and brick and has a slate roof. It is 3 storeys with rooms in the attic. No 17 is a good example of a 19th century building exhibiting the use of traditional materials and construction methods. As such, from the evidence available to me, I consider that the significance of No 17 is largely derived from its form, fabric, age and architectural features.
7. In addition, the setting of the listed building, forming one of several vernacular dwellings, which front Tower Hill, with sizeable rear gardens, also makes a valuable contribution to its significance. These dwellings are different in character, size and type. However, they are similar in that they are positioned close to the road so that most of their garden areas are located at the rear. In relation to Linton Lane there is only one other dwelling fronting it that is within BCA, other than the appeal property, and it is a 1.5 storey dwelling.
8. From the details available to me I consider that the significance of this part of BCA is largely drawn from the variety of historic buildings that it contains together with its use of materials, pattern of development and the relationship of buildings to the spaces around them.
9. S.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. S.66(1) of the Act requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
10. Paragraph 132 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. The glossary to the Framework states that the setting of a heritage asset comprises the surroundings in which it is experienced and that different

¹ 162640

elements of that setting may either make a positive, negative or neutral contribution to its significance.

11. The proposal seeks to retain the dwelling as constructed. The alterations from the approved plans include a porch, larger footprint, amended design and width of windows including the dormers, an additional dormer window, the use of brick and render detailing, a larger chimney and the omission of rooflights.
12. The approved design includes a simple, small canopy over the front door that complements the overall design of the dwelling. I acknowledge that the porch as constructed appears to be of high quality materials and construction and that there are large modern dwellings on the opposite side of Linton Lane. However, its overall height, depth and design means that it is a prominent feature on the front elevation of the host building that has an overly dominant impact on the property itself with consequent harm to the character and appearance of this part of BCA.
13. The porch is also a prominent feature when viewed from the junction of Linton Lane and Tower Hill, especially at the time of year of my site visit when the landscaping is not in full leaf. Consequently, even though the impact is localised I consider that the retention of the porch would cause harm to the character, appearance and significance of this part of BCA. However, taking into account the siting of the porch in relation to the dwelling and the listed building I consider that the retention of the porch would not cause appreciable harm to the setting of No 17.
14. The south elevation as constructed is slightly longer than that approved as is the depth of the rear outrigger. There is no dispute between the parties that the dwelling has not increased in height. The increase in footprint is not significant and I noted on site that the dwelling is not appreciably larger than the adjacent dwelling that fronts Linton Lane.
15. The ground floor windows on the front elevation have increased in width from that approved and the arched heads have been removed. I noted at my site visit that there is a variety of window design throughout BCA and within the immediate vicinity of the site. The windows as installed are of timber and a flush fitting, side- hung casement design that is found in vernacular dwellings. The amended design and size reflects that found elsewhere in BCA.
16. The design of the dormer windows, as constructed, is reflective of that found on vernacular dwellings. The additional dormer window on the north elevation is not readily visible from the public domain and due to its design I do not consider that it harms the overall design of the dwelling.
17. The brick and render detailing as constructed has the overall effect of the aggrandisement of the dwelling. I noted at my site visit that the use of brick quoins is not a common feature in BCA but there are examples for the use of plinth and relief courses. Consequently, the brick quoins are a discordant element in this part of BCA. The retention of the quoins would cause some harm to the character and appearance of BCA. However, I do not consider that the brick detailing has a greater impact than the approved design on the setting of No 17.
18. The base of the chimney has increased in size over that approved and the rooflights have been omitted. The Council have not objected to these amendments and I have no reason to disagree.

19. Taking into account all of the above, I consider that the size and mass of the dwelling, the retention of the windows, the use of plinth and relief courses, the enlarged chimney and the omission of the rooflights do not cause significantly greater impact on the significance of BCA or the setting of No 17 than the approved scheme. However, the porch and the use of brick quoins do harm the character, appearance and significance of BCA. In the language of the Framework that harm would be less than substantial.
20. However, as stated above, there is no dispute between the parties that the amendments as shown on drawing 1761-101B can be considered as part of this appeal. These amendments include the removal of the porch and replacement with a canopy and the removal of the brick quoins. These amendments would overcome the harm to the significance of BCA that I have outlined above. As such, the overall scheme taking into account drawing no 1761-101B would preserve the significance of BCA and it would not have an appreciably greater impact on the setting of No 17 than the approved scheme and would comply with the requirements of the Act.
21. It follows that there would be no conflict with Policies LD1, LD4, SD1, SS6 of the Herefordshire Local Plan- Core Strategy (HLPCS). These policies together require development proposals, amongst other things, to protect, conserve and where possible enhance heritage assets and their settings and character that contribute towards the County's distinctiveness.

Conditions

22. The Planning Practice Guidance makes clear that 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. As I have little information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
23. I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions in relation to materials, joinery, rainwater goods and landscaping are required in the interests of character and appearance. In the interests of highway safety a condition is required for parking. Given the residential character of the area, it is appropriate that controls are placed upon hours of construction and commercial vehicle movements. The condition in relation to cycle parking facilities is required to promote the use of sustainable transport modes. To reduce the risk of flooding and contamination of controlled waters and the wider environment conditions on drainage are required.

Conclusion

24. For the reasons given above I conclude that the development would be in accordance with the development plan and as such the appeal should be allowed. I have therefore granted a new permission for the erection of a new dwelling including demolition of garage and small outbuilding with a new condition in place of the disputed one.

D. Boffin

INSPECTOR

- Schedule Attached -

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 1761-1A and 1761-101B
- 2) Within 4 months of the date of this permission full details of all the materials to be used externally on walls and roofs, joinery and rainwater goods to be used in the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. The works to which they relate shall subsequently only be carried out in accordance with the approved details.
- 3) None of the existing trees or hedgerows on the site shall be removed, destroyed or felled.
- 4) Within 4 months of the date of this permission a scheme of hedge planting shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall prescribe that at least 5 species of native woody shrubs shall be planted within each hedge and it shall include details of the species, sizes and density of planting. All hedge planting shall be carried out in accordance with those details and planted in the first planting season following completion of the development. The hedges shall be maintained for a period of 5 years. During this time, any shrubs that are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5-year maintenance period.
- 5) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas, other than privately owned domestic gardens shall be submitted to and approved in writing by the Local Planning Authority within 4 months of the date of this permission. The landscape management plan shall be carried out as approved.
- 6) Within 1 month of the date of this permission parking for site operatives and visitors shall be provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision shall be retained and kept available during construction of the development.
- 7) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: Monday-Friday 7.00 am-6.00 pm, Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.
- 8) Within 4 months of the date of this permission a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to first occupation of the development hereby permitted.

- 9) Foul water and surface water discharges must be drained separately from the site.
- 10) No surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system.
- 11) No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public sewerage system.