



Appeal Decision

Site visit made on 23 December 2019

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/W1850/W/19/3237380

21-23 & 31 Rowberry Street, Bromyard HR7 4DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Francis Evans, Who Reads Limited against the decision of Herefordshire Council.
- The application Ref 182588, dated 12 July 2018, was approved on 8 August 2019 and planning permission was granted subject to conditions.
- The development permitted is proposed demolition of 21-23 Rowberry Street and replace with 6no. 2 bed residential units. Change of use and conversion of 31 Rowberry Street from car garage to 1no. 2 bed residential unit.
- The conditions in dispute are Nos 5, 9, 11, 12 and 13 which state that:
 - (5) *Before any other works hereby approved are commenced, the construction of the vehicular access shall be carried out in accordance with a specification to be submitted to and approved in writing by the local planning authority, at a gradient not steeper than 1 in 12.*
 - (9) *The Remediation Scheme, as approved pursuant to condition no. (8) above, shall be fully implemented before the development is first occupied. On completion of the remediation scheme the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, which must be submitted and agreed in writing before the development is first occupied. Any variation to the scheme including the validation reporting shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.*
 - (11) *Before any demolition or construction work begins, equipment or materials moved on to site, a Construction Environmental Management Plan (CEMP) including detailed ecological working method statements, including specific details to cover bats and nesting birds, and details of the appointed ecological Clerk of Works (Responsible Person), shall be supplied to the planning authority for written approval. The approved CEMP shall be implemented and remain in place until all work is complete on site and all equipment and spare materials have been finally removed.*
 - (12) *Prior to commencement of the development, a detailed habitat enhancement scheme including provision of bird nesting boxes (including provision for House Sparrows and Swifts), bat roosting feature and insect 'hotels' made of durable materials such as ecostyrocrete or woodcrete should be submitted to and be approved in writing by the local planning authority, and the scheme shall be implemented as approved. No external lighting should illuminate any habitat enhancement and all lighting should support the Dark Skies initiative.*
 - (13) *No surface water and/or land drainage shall be allowed to connect directly or indirectly with the public sewerage network.*
- The reasons given for the conditions are:
 - (5) *In the interests of highway safety and to conform with the requirements of Policy MT1 of Herefordshire Core Strategy.*
 - (9) *In the interest of human health and to ensure that new development does not contribute to, or suffer from, adverse impacts arising from contamination, to conform*

with the requirements of Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.

(11) In order to comply with Conservation of Habitats and Species Regulations (2017), National Planning Policy Framework, Wildlife & Countryside Act (as amended), NERC Act (2006), NPPF (2018) and Herefordshire Council Core Strategy (2015) policy LD2.

(12) To ensure that all species are protected and habitats enhanced having regard to the Wildlife and Countryside Act 1981 (as amended), the Conservation (Natural Habitats, &c) Regulations 2017 (as amended) and Policy LD2 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework 2018, NERC 2006.

(13) To prevent hydraulic overloading of the public sewerage system, to protect the health and safety of existing residents and ensure no pollution of or detriment to the environment.

Decision

1. The appeal is allowed and the planning permission Ref 182588 for *proposed demolition of 21-23 Rowberry Street and replace with 6no. 2 bed residential units. Change of use and conversion of 31 Rowberry Street from car garage to 1no. 2 bed residential unit* at 21-23 & 31 Rowberry Street, Bromyard HR7 4DT granted on 8 August 2019 by Herefordshire Council, is varied by deleting Condition 5 and also by deleting Condition 9 and substituting for it the following condition:

- 9) Any Remediation Scheme submitted pursuant to Condition no. (8) above shall be fully implemented before the development is first occupied. On completion of the Remediation Scheme, the developer shall provide a validation report to confirm that all works were completed in accordance with the agreed details, and the development shall not be occupied until the validation report has been submitted to and approved in writing by the local planning authority. Any variation to the scheme, including the validation reporting, shall be agreed in writing with the Local Planning Authority in advance of works being undertaken.

Procedural Matters

2. The appellant has sought to appeal the removal of informatives attached to the planning permission by the Council. However, these informatives do not carry any legal weight and cannot be used in lieu of planning conditions. Given that these items are attached for information only and do not constitute planning conditions, there is no right of appeal against them and I have therefore not considered these matters further.

Background and Main Issues

3. Planning permission was granted under permission 182588, for the proposed demolition of 21-23 Rowberry Street and replace with 6no. 2 bed residential units. Change of use and conversion of 31 Rowberry Street from car garage to 1no. 2 bed residential unit, including Conditions 5, 9, 11, 12 and 13 that are subject of this appeal.
4. The appeal seeks the removal of Condition 5 (relating to the construction of the vehicular access), Conditions 11 & 12 (relating to a construction environment management plan (CEMP) and enhancements relating to ecology respectively) and Condition 13 (restricting surface water discharge to the public sewerage

network) as the appellant considers that these conditions are unreasonably onerous and unnecessary. The appellant also contends that Condition 9 (remediation scheme for contaminated land) should be reworded as it assumes that this will be required by Condition 8 and is therefore not adequately precise.

5. As such noting the above, the main issues are whether the conditions are adequately precise; reasonable or necessary to the development permitted.

Reasons

Condition 5

6. The proposal seeks to provide a new vehicular access into the site from the public highway of a different form and location than the existing arrangements. To my mind such provision is necessary and reasonable to secure the delivery of a suitable and safe access to serve the development as proposed.
7. However, this is a matter which is adequately addressed by Condition 7, which requires the provision of access and turning areas prior to the use of the development permitted in accordance with details to be submitted to and approved by the Council. Accordingly, Condition 5 is not needed for this purpose. Moreover, whereas Condition 7 requires the access to be provided before the development is brought into use, Condition 5 requires it before any other approved works are commenced. Consequently, it is necessary to amend the conditions in order to address the lack of clarity arising from this anomaly. Having considered the cases before me, I cannot see any necessity for the more onerous approach in Condition 5. Accordingly, I will remove Condition 5 as requested. In doing so, I am mindful that Condition 5 makes reference to the required gradient of the access. However, I am satisfied that ensuring an appropriate gradient is something which could be adequately addressed in discharging Condition 7.
8. I note that the appellant refers in this regard to Condition 6 rather than Condition 7. However, the duplication on the matter of the access is clearly with Condition 7 rather than Condition 6, which deals with car parking and, read in this context, the points raised by the appellant are clear.
9. On the evidence before me, I consider it is reasonable to require details of the access to be submitted to and approved in writing, and the access to be provided prior to the use of the development. I am not aware or persuaded of any need for the approved access to be provided prior to any works on the site and am satisfied that the removal of Condition 5 would not prejudice highway safety. As such I conclude that Condition 5 is not necessary or reasonable owing to its duplication by Condition 7, taking into account the advice within the National Planning Policy Framework (the Framework) and the Planning Practice Guidance on the use of planning conditions.

Condition 9

10. With regard to Condition 9, the appellant contends that the wording should be amended to be more precise, given that it is reliant on a remediation scheme being required pursuant to Condition 8. I acknowledge that Condition 8 is a 'stepped' process. However, to my mind the wording of Condition 9 suggests that a remediation scheme will be required. As such I consider, in the interests of precision and accuracy, that it is necessary to alter the wording of the

condition so that any such remediation scheme is to be submitted only if required by Condition 8. The amended wording is shown in the decision above.

Condition 11

11. The appellant contends that Condition 11 relating to a construction environmental management plan (CEMP) is not reasonable or necessary, owing to a lack of existing use of the site by protected species or of suitable biodiversity features. The appellant has indicated that survey work has been undertaken and that bats were not found; and visual examination indicates that there are no nesting birds and the habitat is unsuitable for wildlife. However, although the appellant and Council's planning officer report makes reference to surveys submitted, these details have not been provided in support of this appeal, whilst the consultation response received from the Council's ecologist suggests that the building offers opportunities for both bats and birds and that such a condition is necessary. In the absence of evidence to demonstrate that this condition is not required and noting the protection afforded to the identified species, I am not persuaded that the requirements of Condition 11 are unnecessary in this case.
12. Whilst I note the appellant's comments with regard to the demolition of the building, owing to its position in a conservation area, this does not alter my findings on these matters.

Condition 12

13. With regard to Condition 12, I note the requirements of policy LD2 of the Herefordshire Local Plan Core Strategy (2015) and of the Framework that both support the provision of biodiversity enhancement. The aims of Condition 12 are consistent with the provisions of these documents. As such I consider that Condition 12 is reasonable and necessary in this context.

Condition 13

14. Whilst I acknowledge the appellant's contention that surface water from the existing development discharges to the public sewerage network, the submitted application form indicates that the proposal would dispose of surface water via a sustainable drainage system (SUDS).
15. The appellant contends that the proposal will not increase the amount of rain/surface water draining from the development and therefore the reasons provided for the condition (hydraulic overloading; health and safety; pollution prevention) are not relevant to the proposal. However, the proposal considered by the Council was based upon a SUDS scheme of drainage, and the consultation response received from Welsh Water suggests that Condition 13 is necessary. In the absence of technical evidence to demonstrate that other alternatives would be satisfactory I am not persuaded that the proposal would not significantly alter the current arrangement and characteristics of drainage from the site or that the reasons for the condition provided are inaccurate. As such I consider that Condition 13 is both reasonable and necessary.

Conclusion

16. For the reasons given above I conclude that the appeal should be allowed. I will vary the planning permission by deleting disputed Condition 5 and replacing Condition 9 with a revised condition as detailed within the decision above. However, for the reasons given above Conditions 11, 12 and 13 remain unchanged.

Robert Lankshear

INSPECTOR