



Appeal Decision

Site visit made on 16 June 2020

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/W1850/W/19/3241087

The Wylde House, Ledbury HR8 2JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 Backhouse against the decision of Herefordshire Council.
- The application Ref 192371, dated 10 July 2019, was refused by notice dated 10 October 2019.
- The application sought planning permission for proposed conversion of existing workshop/summer house to residential annex accommodation. Creation of an en-suite bathroom to existing bedroom without complying with conditions 2 and 3 attached to planning permission Ref P142677/FH, dated 30 October 2014.
- The conditions in dispute are Nos 2 and 3 which state that:
 - (2) The development hereby approved shall be carried out strictly in accordance with the approved plans (Drawings reference DI, 05, 06 and 08, and Design and Access Statement, Received 2nd September 2014) and the schedule of materials indicated thereon.
 - (3) The ancillary accommodation and the dwelling known as Wylde House, Ledbury, Herefordshire, HR8 2JE shall not be sold, leased or let separately from each other.
- The reasons given for the conditions are:
 - (2) To ensure adherence to the approved plans and to protect the general character and amenities of the area in accordance with the requirements of Policy DRI of the Herefordshire Unitary Development Plan and the National Planning Policy Framework.
 - (3) It would be contrary to the policy of the local planning authority to grant permission, for a separate dwelling in this location having regard to acceptable levels of residential amenity and privacy and Policy DR1, DR2 and. H 18 of Herefordshire Unitary Development Plan and the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for proposed conversion of existing workshop/summer house to residential annex accommodation. Creation of an en-suite bathroom to existing bedroom at The Wylde House, Ledbury HR8 2JE in accordance with the application Ref 192371, dated 10 July 2019, without compliance with conditions 2 and 3 previously imposed on planning permission Ref P142677/FH, dated 30 October 2014 and subject to the following condition:
 - 1) The development hereby approved shall be carried out strictly in accordance with the following approved plans and document (Drawings D5A and D6A, and drawings D1, D8 and the Design and Access Statement, received on the 2 September 2014 and the schedule of materials indicated thereon).

Procedural matter

2. The Council's reason for refusal refers to 'proposed vehicle parking'. However, on the plans before me, no proposed parking area is identified. I have proceeded with the appeal on this basis.

Background and main issue

3. The appeal site comprises a Grade II listed building known as 'Wylde House' which is a dwelling located within a sizeable plot. Wylde House includes a workshop/summer house ('the annex') that is linked to its northwest elevation.
4. The main parties agree that the permission from 2014 (the original permission) has been implemented because works to create the en-suite to an existing bedroom have been undertaken, I have no evidence to dispute this.
5. As part of the new application¹, the appellant is seeking to 'vary' Condition 2. This is to substitute approved drawing numbers D5 and D6 with amended drawings D5A and D6A. Based on the Council's Delegated Decision Report, the amended drawings show the inclusion of fixed obscure glazed windows and the sealing of a doorway, along the south east elevation of the annex. I concur with the Council that the proposed amendments are acceptable and would not conflict with the reason for imposing Condition 2. In respect of Condition 2, as the appellant has not specifically suggested any amendments to approved drawings 1, 8 and the design and access statement, I have retained these as part of the varied condition (Condition 1).
6. The appellant is also seeking to remove Condition 3, to allow the annex to be sold or let separately from Wylde House. Accordingly, the main issue is whether Condition 3 is relevant and necessary.

Reasons

7. At its heart the disputed Condition 3 states the approved annex subject the original permission cannot be occupied as a separate living unit, this is principally to safeguard the living conditions of neighbours, as reflected in the reason for its imposition.
8. On the information available to me, the conversion of the workshop/summer house was approved as ancillary accommodation for Wylde House. The description of the development on the decision notice of the original permission which includes: 'Proposed conversion of existing workshop/summer house to residential annex accommodation' reflects this. Consequently, that planning permission did not authorise the creation of a second, separate unit of living accommodation in the curtilage of Wylde House.
9. Therefore, even if the disputed Condition 3 had not been imposed, to occupy the annex in a way that is not ancillary to the main house requires a further planning permission. I note too that the condition seeks to resist the disposal of the annex, separate from Wylde House. Irrespective of this, if the use remains in line with that permitted, I am not convinced that ownership, leasing and letting are planning matters. Consequently, the disputed Condition 3 cannot be seen as relevant to the development subject of the application or needed to make it acceptable in planning terms. Accordingly, I find it does not

¹ Ref 192371

satisfy the appropriate tests in the Planning Practice Guidance (PPG) and so the development can be undertaken without complying with the disputed Condition 3.

10. However, the Appellant expressly submitted this current proposal under section 73 of the Act so that the annex '*...may be sold separately from the main dwelling....*'. It is clearly a matter for the Council to determine whether or not planning permission would be required for however the building would be occupied. He is reminded though that by allowing this appeal under section 73 of the Act I am not authorising a change of use. Rather, if this appeal succeeds, I would be allowing the development subject of the permission (namely the proposed conversion of existing workshop/summer house to residential annex accommodation. Creation of an en-suite bathroom to existing bedroom) but with a variation to Condition 2 and without complying with Condition 3. As such, if the appellant or anyone else wishes to use the annex in a way that does not fall under that description and is not authorised by that permission a fresh planning permission could be required.
11. Moreover, as I am not considering a material change of use, I have not addressed the comments and evidence in the submissions and representations about whether or not an independent unit here would be acceptable in planning terms, as those matters are not before me.
12. In light of the above, the disputed Condition 3 is neither relevant nor necessary and its removal would not be in conflict with Policy SD1 of the Herefordshire Local Plan - Core Strategy which amongst other things seeks to safeguard amenity for existing residents.
13. In respect of any other conditions on the original permission, the PPG makes clear that when granting planning permission under section 73 of the Act they should be repeated on decision notices unless they have already been discharged. In this case the only other condition specified on the original permission relates to the time-limit for implementing it. As the original development has been started, it is not necessary for me to impose this condition.

Other Matters

14. The evidence before me is insufficient to conclude that the appeal site is not solely owned by the appellant and that the submitted ownership certificate and information are incorrect. Whilst I understand the appeal site is close to an Area of Outstanding Natural Beauty and a Conservation Area, given my reasoning these have no bearing on my findings.

Conclusion

15. For the reasons given above, I conclude that the appeal should be allowed.

M Aqbal
INSPECTOR