The Planning Inspectorate

Appeal Decision

Site Visit made on 1 February 2021

by Mr Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th February 2021

Appeal Ref: APP/T3725/W/20/3261846
River Studio, Old Milverton Lane, Old Milverton, LEAMINGTON SPA CV32 6RW

- 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 Peter Williamson, on behalf of Supersonic Games, against the decision of Warwick District Council.
- The application Ref W/20/1275, dated 13 August 2020, was refused by notice dated 15 October 2020.
- The application sought planning permission for the change of use to offices (Use Class B1a), general industrial use (Use Class B2) and storage (Use Class B8) with installation of link between buildings and new door without complying with a condition attached to planning permission Ref W10/0156, dated 28 April 2010.
- The condition in dispute is No 15 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any order revoking and re-enacting that Order with or without modification), no development shall be carried out which comes within Parts 2, 8 and 41 of Schedule 2 of this Order, without the prior permission of the District Planning Authority.
- The reason given for the condition is: To ensure that the rural character and appearance of the barn(s) is protected, in accordance with Policy RAP7 of the Warwick District Local Plan 1996-2011.

Decision

1. The appeal is allowed, and planning permission granted for the change of use to offices (Use Class B1a), general industrial use (Use Class B2) and storage (Use Class B8) with installation of link between buildings and new door at River Studio, Old Milverton Lane, Old Milverton, LEAMINGTON SPA CV32 6RW in accordance with application Ref W/20/1275 without compliance with condition 15 previously imposed on planning permission Ref W10/0156, granted on 28 April 2010, but otherwise subject to the conditions within the attached schedule.

Preliminary Matters

2. The original application was subject to consideration under the Warwick District Plan 1996-2011 and policy RAP7, which related to the conversion of rural buildings. The Council has identified that the proposal would now be subject to the Warwick District Local Plan 2011-2029 (2017) (LP) and its broadly equivalent policy BE4. I shall take this into account in the decision.

3. The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020 came into effect on 1 September 2020. The element of the proposed change of use relating to Use Class B1(a) would therefore now fall within Class E(g) of Part A, Schedule 2 of the 2020 Regulations. However, these regulations include a material (transition) period for those applications that relate to permitted development rights until July 2021. As such, I have not altered the description of development.

Main Issue

4. The main issue is the effect that removing condition 15 would have on the character and appearance of the building and the surrounding landscape.

Reasons

5. The appeal site consists of a commercial building set within a rural setting. The building is therefore largely remote from surrounding built form. It is bound by a small stream to one side and a post and rail fence to its other side and rear boundaries. A small group of trees are in front and to the side of the building, screening it to some extent from the public highway. The building includes the use of timber cladding and aluminium windows with a metal standing seam pitched roof. It also includes a smaller flat roofed side return. The building stands in a small hollow with most surrounding land rising around it. Therefore, due to the surrounding topography, the building is largely secluded. It therefore has a limited visual impact on the surrounding countryside.

6. Condition 15 removes permitted development (PD) rights, with respect to minor development, and in connection with PD rights associated with industrial, warehouse and office development. The condition was imposed to ensure that the character and appearance of the building would not be affected by further development. The National Planning Policy Framework (The Framework) advises that conditions should not be used to restrict PD rights unless there is clear justification to do so. Tests set out in paragraph 55 include the requirement for conditions to be necessary and reasonable. Furthermore, the Planning Practice Guidance[1] (PPG) states that conditions that restrict the future use of PD rights are unlikely to pass the tests of reasonableness and necessity. Although the approval in 2010 pre-dates the Framework, this appeal decision must reflect current policy and material considerations.

7. The condition essentially prevents relatively modest alterations to the property. Consequently, such changes to the property would have limited scope to substantially alter the appearance of the building. Accordingly, the limitations and function of PD rights would be sufficient to protect the character and appearance of the building. Moreover, due to its moderately secluded location and local screening, such changes to the building and site would have a minimal effect on the surrounding countryside. As such, the property does not present a situation where such circumstances exist that render it necessary for these rights to be removed.

8. Accordingly, I find that condition 15 is neither necessary nor reasonable and thus fails the tests in the Framework. Therefore, the removal of the condition would have a negligible effect on the character and appearance of the building

[1] Paragraph: 017 Reference ID: 21a-017-017-20190723

and the surrounding landscape. Consequently, the proposed building with its PD rights intact, would comply with policy BE4 and NE4 of the LP. These require, amongst other things, for the conversion of rural buildings to protect the character and appearance of the countryside and to positively contribute towards landscape character.

Other Matters

9. The operation of Green Belt policy, activated during the consideration of development requiring planning permission, is exclusive to PD rights. Nevertheless, PD rights describe development that is modest in scale and therefore can operate without a material effect on the openness of the Green Belt.

Conditions

10. I have deleted the disputed condition 15 as indicated above. The PPG indicates that, 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. In this case, 7 conditions attached to the original permission appear to remain relevant and have therefore been imposed. I have updated the condition in regard to visibility splays and on-site turning facilities to reflect that they are now in place. The Council has suggested a condition that the development should be retained in accordance with the approved drawings. However, this condition is unnecessary as the development has been completed and would now be subject to PD rights for alteration. The imposed conditions are required in consideration of the character and appearance of the area, to protect nearby living conditions and to maintain highway safety.

Conclusion

11. Therefore, for the above reasons the appeal is allowed, and planning permission granted, with condition 15 removed accordingly.

Mr Ben Plenty

INSPECTOR

Schedule of Conditions

1) The residence known as Quarry Cottage (and so labelled on the approved location plan) shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floor space hereby permitted, or by a widow or widower of such a person, or any resident dependants.

2) No machinery shall be operated, no process involving the use of power tools shall be carried out and no deliveries shall be taken at or despatched from the premises, except between the hours of 0800 and 1800 on Mondays to Saturdays and not at any time on Sundays, Bank or Public Holidays.

3) The vehicular access for the development hereby permitted shall not be reconstructed in such a manner as to reduce the effective capacity of any highway drain or ditch.

4) The visibility splays, of the installed vehicular access to the public highway carriageway, shall not be obscured by any structure, trees or shrubs exceeding 0.6 metres in height above the adjoining highway carriageway.

5) Gates provided at the entrance to the site shall not be hung so as to open to within 5.5 metres of the near edge of the public highway carriageway.

6) The vehicular turning space within the site shall be maintained to ensure that all vehicles are able to enter and leave the public highway in a forward gear. The area shall thereafter be kept available for that purpose.

7) No materials, plant or equipment of any description including skips or containers, shall be stacked, stored or deposited on any open area of the site.

End of Conditions