



Appeal Decision

Site Visit made on 1 February 2021

by Ian Radcliffe BSc(Hons) DMS MCIEH MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th February 2021

Appeal Ref APP/V2825/W/20/3258793

Billing Arbours House, Heather Lane, Northampton NN3 8EY

- 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 without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr and Mrs S Hyland against the decision of Northampton Borough Council.
- The application Ref N/2019/1174, dated 8 September 2019, was refused by notice dated 12 March 2020.
- The application sought planning permission for conversion of part of building to 2 No dwellings including new rooflights, new window openings, replacement doors and windows, blocking up existing windows, removal of internal walls/partitions and doors, installation of new partition walls, new brick garden walls and installation of block paved areas to rear and on-site parking without complying with conditions attached to planning permission Ref N/2017/1442, dated 8 January 2018.
- The conditions in dispute are Nos 2,3 and 7 which state that:
 - 2. The development hereby permitted shall be carried out in accordance with the following approved plans:13/H173/201, 13/H173/202.
 - 3. Details of the vehicle crossover and site access shall be submitted to and approved in writing by the Local Planning Authority prior to the commencement of any work on site and shall be constructed in accordance with the approved details prior to the commencement of the use hereby permitted and maintained thereafter. For the avoidance of doubt this shall incorporate a crossover of 4.5m width for the first 10m into the site, with the first 5m of this hard bound, and pedestrian visibility splays of 2m x 2m.
 - 7. Details and/or samples of all proposed external facing materials including the boundary walls 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 reasons given for the conditions are:
 - 2. For the avoidance of doubt and to accord with the terms of the planning application.
 - 3. In the interests of highway and pedestrian safety, in accordance with the National Planning Policy Framework. Pre-commencement condition to ensure details are agreed in a timely manner.
 - 7. In the interests of visual amenity and to ensure that the development will harmonise with its surroundings and that the integrity of the listed building will be protected, in accordance with policies S10 and BN5 of the West Northamptonshire Core Strategy and the National Planning Policy Framework.

Decision

1. The appeal is allowed and planning permission is granted for conversion of part of building to 2 No dwellings including new rooflights, new window openings, replacement doors and windows, blocking up existing windows, removal of internal walls/partitions and doors, installation of new partition walls, new brick garden walls and installation of block paved areas to rear and on-site parking at Billing Arbours House , Heather Lane, Northampton NN3 8EY in accordance

with the terms of the application, Ref N/2019/1174, made on 8 September 2019, without complying with conditions Nos 1, 2, 3 and 7 set out in planning permission ref N/2017/1442 granted on 8 January 2018, but otherwise subject to the conditions in the schedule at the end of this decision.

Preliminary Matters

2. The application form applied for the variation of conditions 2 and 4 and the deletion of condition 3. However, the application has been determined and the appeal has been made on the basis that the application was for the variation of conditions 2 and 7 and the deletion of condition 3. Accordingly, I have therefore dealt with the appeal on this basis.
3. The permission in relation to which the contested conditions have been attached, namely the conversion of part of Billing Arbours House into two dwellings, appears to have been largely implemented with dwelling No 1 in use. However, the parking spaces to the front, together with the subdivision and boundary treatment of the courtyard to the rear, have either not been carried out or have not been carried out in accordance with the approved plans. I have determined the appeal therefore on the basis of the approved plans and the plans that form the application that is the subject of the appeal (the 'appeal plans'), rather than the development that has taken place on site.

Main Issue

4. Billing Arbours House is a Grade II listed former farmhouse with an enclosed courtyard of buildings to the rear. The house and its courtyard have been subdivided into different dwellings.
5. As part of the permission for the development the two parking spaces for dwelling No 2, together with the three parking spaces for dwelling No 1, were to be located in front of the main elevation of Billing Arbours House. To assist the occupier of dwelling No 2 the appeal plans relocate the parking for this unit to the courtyard to the rear of the main building directly behind this dwelling. The appeal plans show the sub-division of space to the rear of these two dwellings using wooden fencing rather than walls as in the approved plans. Accessing these parking spaces requires the use of the side vehicular access to the rear of the house which is already in use by several other dwellings rather than the side access to the front. Based upon these differences and the Council's reasons for refusal the main issues in this appeal are:
 - whether the conditions that require that parking is provided to the front of the house and is accessed from the side front vehicular access are necessary and reasonable having regard to highway safety; and,
 - the effect that the use of wooden fencing to sub-divide the space to the rear of the two dwellings and the relocated parking spaces would have on the character and appearance of the listed building and its setting.

Reasons

Highway safety

6. Relocating the parking for dwelling No 2 to the rear would increase the number of dwellings that use the courtyard for off-road parking and make use of the same private vehicular access from Heather Lane to 7. This would be in breach of the policy DM15 of the Northamptonshire Highway Development Strategy which sets a maximum limit of 5 dwellings using a private access. Although the

Highway Development Strategy does not form part of the statutory development plan it is a material consideration.

7. A previous permission was granted though for six dwellings using the same access in breach of this policy which demonstrates that there is some flexibility in its application. As part of that development the access was increased in width to 4.5m so that should vehicles be entering and leaving the site at the same time they could pass each other on the drive without coming into conflict or forcing one vehicle to wait on Heather Lane or reverse back onto the highway. With wide visibility splays there is also excellent visibility of oncoming vehicles along this quiet no through road lane in both directions. The design and layout of the access is therefore of a high standard and safe.
8. There is concern that the more dwellings that use a private access the greater the difficulty in all parties agreeing to pay for its repair and maintenance. In time, for example, the recently tarmac covered access will require resurfacing. However, given that the key features that relate to the safety of the access, namely its width and visibility splays, are fixed and not reliant on significant maintenance, failure to reach agreement on matters such as resurfacing will inconvenience residents but will not harm highway safety.
9. Taking all these matters into account, I therefore conclude that relocating the parking from the front to the rear and thereby increasing the number of dwellings the rear access serves from 6 to 7 would not result in demonstrable harm to highway safety. Condition 3 which requires that the access serving the parking area to the front of the house is upgraded is therefore unnecessary.

Character and appearance

10. As a Grade II listed building Billing Arbours House is a designated heritage asset. The plans that form part of the permission show the use of 2m high walls as the boundary treatment for the division of the outdoor space to the rear of the two dwellings. However, the appeal plans have changed the boundary treatment to shiplap timber fencing with a lattice panel above reaching an overall height of 2m.
11. The Council has no objection to the use of fencing rather than brick walls on the basis that it would not harm the listed building or its setting. I agree with that position. Condition 7, which requires the submission of details of all external facing materials, including boundary walls, should therefore be varied accordingly.
12. The removal of two of the five proposed parking spaces from in front of Billing Arbours House as part of the development would declutter the front elevation of this listed building. It would also avoid the need to widen and resurface the existing access to the front side of the house which is required by the existing permission. The effect of this would be to improve views of the attractive front elevation of Billing Arbours House, and to preserve the existing access whose dimensions and gates are more in keeping with the property. These changes would better help reveal the significance of this listed building.

Conditions

13. Condition No 2 (condition No 1 in the new permission) is therefore varied to refer to the plans that formed part of the appeal application and condition No 3 requiring the vehicular access to the front of the house to be widened has been deleted. Condition No 7 (condition No 4 in the new permission) which relates to external facing materials is also varied to make reference to boundary

treatments. I have also imposed all the other original conditions that I consider to be relevant. In the event that any of the conditions have in fact been discharged, this is a matter which can be addressed by the parties.

14. It is clear that with dwelling No 1 appearing to be in use that the development is well on the way to completion. As a result, the commencement condition suggested by the Council is not required. The further effect of this is that conditions 2, 3 and 4 below, which originally either required compliance before the commencement of development, before occupation or had no time element, would not be enforceable. I have therefore reworded these conditions inserting a time period for compliance in condition 2 and with conditions 3 and 4 requiring that details are submitted, approved and implemented so as to make the development acceptable in planning terms.
15. In relation to conditions 3 and 4 there is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use negatively-worded conditions to secure the approval and implementation of the outstanding matters before the development takes place. The wording of the conditions will ensure that the development can be enforced against if their requirements are not met.
16. The appellant and Council were consulted on the time limits in conditions 2,3 and 4 and the comments received have been taken into account.

Conclusion

17. For the reasons given above, I therefore conclude that the appeal should be allowed with condition 3 of the permission deleted and conditions 2 and 7 varied.

Ian Radcliffe

Inspector

Schedule of conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 13-H173-201A, 13-H173-202A, 13-H173-203A
2. Within 3 months of the date of this permission the car parking spaces as shown on the approved plans shall be laid out and made available for the use hereby permitted and shall be retained for as long as the use continues.
3. Unless within 3 months of the date of this decision a scheme for the storage of refuse and materials for recycling is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the dwellinghouses hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the dwellinghouses hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

4. Unless within 3 months of the date of this decision details and / or samples of all proposed external facing materials including boundary treatments are submitted to the local planning authority for approval, and unless the approved details are implemented within 3 months of the local planning authority's approval, the occupation of the dwellinghouses hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the dwellinghouses hereby permitted shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

5. Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking and re-enacting that order with or without modification) the use hereby permitted shall be as two dwellinghouses (Use Class C3) and no change of use of either or both dwellings to a House in Multiple Occupation (Use Class C4) shall be carried out without the prior written consent of the Local Planning Authority.
6. The vehicle crossover and site access as laid out on site and as approved under Condition 4 of Planning Permission N/2016/0709 and shown on drawing 13/H173/30b in respect of that permission shall be maintained for so long as the use hereby permitted remains extant.