



Appeal Decision

Site visit made on 2 February 2021

by **Bhupinder Thandi BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 18 March 2021

Appeal Ref: APP/J1860/W/20/3263730

Allsetts Farm, site of former unit 1, Broadwas WR6 5NS

- 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 P Brooks against the decision of Malvern Hills District Council.
- The application Ref 20/01419/FUL, dated 8 September 2020, was refused by notice dated 4 November 2020.
- The application sought planning permission for development of 1no. live/work unit, part retrospective without complying with condition 2 and the variation of condition 3 attached to planning permission Ref 19/01888/FUL, dated 2 April 2020.
- The conditions in dispute are Nos 2 and 3 which state that:
 - (2) *Upon completion of the development hereby approved and before it is first brought into use the applicant/ developer shall notify the Local Planning Authority in writing that the development is considered to be complete and allow the Local Planning Authority to inspect the development to ensure that it has been completed in accordance with the approved plans and other conditions forming part of this planning permission.*
 - (3) *The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan, 03A Ground Floor, 04A first floor and North Elevation, and 05A Elevations and be retained in that form thereafter.*
- The reasons given for the conditions are:
 - (2) *To ensure that the development is completed and ready for first occupation in accordance with the approved plans.*
 - (3) *To ensure that the development is carried out in accordance with the approved plans and the development is retained as approved, in accordance with South Worcestershire Development Plan Policy SWDP 8.*

Decision

1. The appeal is dismissed insofar as it relates to condition 3. The appeal is allowed insofar as it relates to condition 2 and planning permission is granted for the development of 1no. live/work unit, part retrospective at Allsetts Farm, site of former unit 1, Broadwas WR6 5NS, in accordance with planning application 20/01419/FUL without complying with Condition 2 previously imposed on planning permission 19/01888/FUL, subject to the other conditions set out in the Schedule to this decision.

Application for costs

2. An application for costs was made by Mr P Brooks against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The Council's reason for refusal indicates that it is Condition 3 which is the matter in dispute. They have confirmed that they no longer wish to maintain an objection to the removal of Condition 2. I have no reasons to take a different position and I have dealt with the appeal on this basis. My reasoning therefore relates to Condition 3.

Background

4. In April 2020 planning permission was granted for part retrospective construction of a live/work unit subject to a series of conditions. In doing so the Council imposed a condition requiring the development to be carried out in accordance with the approved plans. The appellant is seeking to vary Condition 3 to permit an amended design and contends it is required to create a more usable and practical first floor work area.

Main Issue

5. The main issue is whether Condition 3 is necessary and reasonable having regard to the character and appearance of the area.

Reasons

6. The appeal site is formed of two partially constructed buildings that sit within a wider complex made up of commercial units, traditional farm buildings converted into dwellings and a house located within open countryside. A Public Right of Way (PROW) extends along the driveway leading to the complex and through neighbouring fields. Given the open nature of the surrounding land there are views of the site from a number of public vantage points.
7. I have been made aware of the planning history for the site which includes a number of developments including works to the house, barn conversions, a car port and commercial units. However, I have no reason to disagree with previous Inspectors that the buildings largely retain the character of a farmstead appearing as a group of rural and former agricultural buildings set within an open and verdant landscape.
8. Whilst the proposed development would continue the form of the existing layout its height would be very close to that of the main building. Notwithstanding the eaves level the proposal would have a substantial form and bulk that would be overly dominant and an intrusive form of development that would fail to reflect or integrate with neighbouring buildings. I acknowledge that there is no specific guidance in respect of the appearance or form of live/work units. However, it is not unreasonable to expect that such development should respect its context and local character. In this regard it would fail to do so in terms of its scale and mass and its relationship with neighbouring buildings, despite the split between work and living floorspace.
9. The proposal would not impact upon the PROW but it would be highly prominent when viewed from the surrounding area. Despite the absence of windows on the upper floor and use of rooflights it would be viewed as a bulky

and prominent feature resulting from its scale and mass. It would not be sympathetic to neighbouring buildings and would be visually intrusive detracting from the character and appearance of the area.

10. I acknowledge that there is a genuine fallback position due to the extant planning permission and that the appellant has attempted to overcome the concerns previously raised including those made in respect of the previous appeal (APP/J1860/W/19/3231183), but the proposal is still one that would be harmful to the character and appearance of the area.
11. As such the proposal would adversely affect the character and appearance of the area contrary to Policies SWDP21 and 25 of the South Worcestershire Development Plan (2016) which, amongst other things, seek high quality design that integrates effectively with its surroundings and character of landscape setting and for the scale, height and massing of development to be appropriate to the setting of the site and surrounding landscape character.
12. It would also be contrary to paragraphs 127, 130 and 170b of the National Planning Policy Framework which, amongst other things, require development to add to the overall quality of the area, to be sympathetic to local character and to recognise the intrinsic character and beauty of the countryside.

Conditions

13. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. From the evidence before me it does not appear that any conditions have been discharged, thus in the interests of clarity I have imposed the conditions on the original planning permission.
14. The PPG also indicates that a grant of planning permission under Section 73 should not extend the time period for implementation. I have therefore amended Condition 1 to include the date of the original permission.

Conclusion

15. For the reasons set out above Condition 3 is reasonable and necessary and the appeal does not succeed insofar as it relates to this condition. The appeal is allowed insofar as it relates to Condition 2 and the planning permission is varied by deleting this condition.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted must be commenced not later than 3 years from the date of 2 April 2020.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan, Block Plan, 03A Ground Floor, 04A First Floor and North Elevation, and 05A Proposed Elevations and be retained in that form thereafter.
- 3) Prior to the occupation of any part of the development hereby permitted details of renewable or low carbon energy generating facilities to be incorporated as part of the development shall be submitted to and approved in writing by the local planning authority. The details shall demonstrate that at least 10% of the predicted energy requirements of the development will be met through the use of renewable/low carbon energy generating facilities. The approved facilities shall be provided prior to any part of the development hereby permitted being first occupied.
- 4) The residential floorspace of the live/work unit hereby approved shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floorspace of the associated unit, a widow or widower of such a person, or any resident dependants.
- 5) (i) The work element floorspace of the live/work unit hereby permitted shall be completed and made available for use before the residential floorspace is first occupied and the residential use shall not precede commencement of the business use.

(ii) The business floorspace of the live/work unit hereby approved shall be limited to Use Classes B1 and B8 only as defined under the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

(iii) The residential use of the live /work unit hereby approved shall be ancillary with the floor space split at least 60% employment and no more than 40% residential.

(iv) The residential accommodation within the live/work unit shall contain no more than three bedrooms.

(v) The residential and work spaces shall be entirely separate with separate entrances and toilet facilities and be retained in that form.

(vi) The development hereby approved shall have access to superfast broadband or equivalent infrastructure.

(vii) There shall not be more than 6 full-time equivalent posts employed at the live-work business.
- 6) Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Classes A and B, and Part 7, Classes F (offices), and H (industrial and warehouses) of

the Town and County Planning (General Permitted Development) Order 2015 (including any Order revoked or re-enacting that Order, with or without modification) no extension or enlargement shall be erected to the live-work unit hereby permitted.

- 7) Prior to the commencement of the development hereby approved details of measures for the enhancement of biodiversity, which shall include the provision of swallow, swift and other nest boxes and a time scale for delivery of all such measures, shall be submitted to and approved in writing by the Local Planning Authority. The biodiversity enhancement measures shall be implemented in accordance with the approved details unless otherwise approved in writing by the local planning authority.
- 8) Any external lighting shall be cowled and directed so as not to spread any lighting within the wider locality.
- 9) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). The wiring must comply with BS7671. The socket should comply with BS1363 and must be provided with a locking weatherproof cover if located externally to the building. The cable and switches should be installed such as they can be adapted to an EV charge point that complies with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 in the future. For developments with unallocated parking i.e. flats/apartments 1 EV charging point per 10 spaces (as a minimum) should be provided by the developer to be operational at commencement of development. The charging point must comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851. As a minimum, charge points should comply with Worcestershire County Council Design Guide which requires 7kw charging points for residential developments.