



Appeal Decision

Site Visit made on 16 November 2021

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 November 2021

Appeal Ref: APP/Z1510/W/21/3276604

Workshop Cobbs Fenn, Sible Hedingham, Halstead CO9 3RX

- 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 and Mrs Harding, Cardel and Grant against the decision of Braintree District Council.
 - The application Ref 21/00904/VAR, dated 18 March 2021, was refused by notice dated 6 May 2021.
 - The application sought planning permission for completion of development of two partly erected buildings into a single residence composed of a main house building with an ancillary residential annex, both entirely comprised of residential living space without complying with a condition attached to planning permission Ref 17/01236/FUL, dated 1 March 2018.
 - The condition in dispute is No 2 which states that: 'The development hereby permitted shall be carried out in accordance with the following approved plans: 130/LOC; 1508 210 Rev B; 1508 221 Rev B; 1508 222 Rev B; 1508 223 Rev B; 1508 231 Rev A; and 1508 232 Rev A.'
 - The reason given for the condition is: 'a condition specifying the relevant plans is necessary as this provides certainty.'
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Decision

1. The appeal is allowed and planning permission is granted for completion of development of two partly erected buildings into a single residence composed of a main house building with an ancillary residential annex, both entirely comprised of residential living space at Workshop Cobbs Fenn, Sible Hedingham, CO9 3RX in accordance with the application Ref 21/00904/VAR, dated 18 March 2021 without compliance with condition numbers 2, 3, 4, 5, 6 and 7 previously imposed on planning permission ref 17/01236/FUL dated 1 March 2018 and subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Mr and Mrs Harding, Cardel and Grant against Braintree District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. At the time of my visit, there was building work ongoing at the site. However and for the avoidance of doubt, I have dealt with the appeal on the basis of the development as it is shown on the submitted plans.

Background and Main Issue

4. Planning permission was granted on the appeal site under application reference 17/01236/FUL ('the original permission') subject to conditions including condition 2 which sets out the approved plans. These show a main dwelling towards the east part of the site comprising 2 main sections linked by a part-glazed lobby, as well as a separate annexe building.
5. The appeal relates to an application made under Section 73 of the Town and Country Planning Act 1990 ('the Act') seeking revision to the plans approved at condition 2 of the original permission in order to reconfigure accommodation within the southern section of the building. There would be associated external alterations, but the Council does not object to these changes in themselves, and from my visit and the evidence before me I am also satisfied that the external alterations would be acceptable.
6. In light of the above and the submitted evidence, the main issue is whether or not the proposed alterations to the development would be acceptable having regard to the nature of the accommodation proposed and the location of the site within the countryside.

Reasons

7. The plans approved under the original permission did not detail the internal layout of much of the southern section of the dwelling, labelling the space shown here as 'living accommodation – final layout reserved'. The appeal proposes that closest to the connecting lobby, the southern section of the building would accommodate 2 bedrooms at first-floor level, and a utility room, plant room, store and WC at ground-floor level. Beyond these, there would be a music/yoga studio, and steps up to a mezzanine level art studio.
8. The only internal access between the northern part of the dwelling and the music/yoga/art studio space would be through the ground floor utility room, with no connection at first-floor level. The Council is concerned that the ground-floor doorway would not need to be implemented, albeit that I saw it was present at the time of my visit, and that the space within the southern part of the building could be used as a self-contained unit. However, while there is only a single ground floor link to the rest of the dwelling, I do not consider the access so impracticable or awkward as to prevent the space functioning as part of the dwelling. I acknowledge the Council's comments that it would not be possible to control how the internal space were laid out nor to prevent insertion of features such as a kitchen, bathroom or bedroom. I am also advised that the appellant has in the past referred to various purposes to which the space in the southern section of the dwelling could be put. Nevertheless, the original permission already allows for use of this space as part of the dwelling.
9. Even if the space could be used as a separate dwelling, that is not the development that is before me to consider as part of this appeal and despite previous proposals for additional dwellings on the site, I am not persuaded that such an outcome would be inevitable. Moreover, if the southern part of the building was not constructed or used as accommodation associated with the main dwelling as is proposed, or if there were a material change of use in the future to create a separate dwelling, then a separate grant of planning permission would be required. The building would be at risk of enforcement

action if such permission were not granted, and I have no firm evidence that such action would be unduly problematic or impractical in this case.

10. The appeal site is outside of any defined settlement boundary and is within the countryside. I note a number of previously dismissed appeals where proposals for additional dwellings on the site were found to be unacceptable in this location, and comments within these decisions that occupiers would depend heavily on use of private vehicles to access services and facilities. However, there is no compelling evidence before me that the development as applied for, including music/yoga/art studio space forming part of an existing dwelling, would be an inappropriate use in the countryside, nor that it would increase either the need to travel or reliance on non-sustainable modes of travel. There is also no substantive evidence that the proposal would harm the landscape character, biodiversity, geodiversity or amenity of the countryside.
11. Given the above, I conclude that the proposed variation of condition 2 would be acceptable, and I find no conflict with Policy RLP2 of the Local Plan Review 2005 or Policies CS5 or CS7 of the Core Strategy 2011 which broadly seek to limit development outside settlement boundaries to uses appropriate to the countryside, and to reduce the need to travel.

Conditions

12. The Government's Planning Practice Guidance makes clear that permission granted under Section 73 of the Act should restate conditions imposed on the earlier permission that continue to have effect.
13. I have not attached condition 1 of the original permission as development has commenced, and a condition to specify the period for implementation is therefore unnecessary. I have imposed a replacement condition 2 which contains the updated plan numbers in the interests of certainty. The details before me refer to approval granted for changes to the annexe building included within the original permission, but this is a separate permission, and would not be affected by the current appeal.
14. In place of conditions 3 (tree protection), 4 (habitat protection) and 5 (materials) of the original permission, I have imposed a condition suggested by the Council to require that development is carried out in accordance with details that have been approved under application reference 20/01947/DAC. However, conditions 6 (landscaping) and 7 (means of enclosure) of the original permission include provision for the implementation and maintenance of the relevant details following approval. I have therefore imposed replacement conditions which carry forward these requirements while reflecting the approved details. I have also re-attached conditions 8 and 9 of the original permission relating to the ancillary use of the annexe building which remains necessary to prevent the creation of a separate planning unit; and to working hours which remains necessary in the interests of the living conditions of neighbouring occupiers.

Conclusion

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

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 130/LOC, 1508 210 Rev B, 1508 231 Rev A, 1508 232 Rev A, 1508 321, 1508 322, 1508 351 and 1508 352.
- 2) The development shall be carried out in accordance with the details approved under application reference 20/01947/DAC.
- 3) Hard and soft landscaping shall be carried out and maintained in accordance with the details approved under application reference 20/01947/DAC. Any trees, shrubs or plants which are removed, die or become seriously damaged or diseased within five years of planting, shall be replaced within the next planting season by trees, shrubs or plants of the same size or species.
- 4) Prior to the occupation of the development hereby permitted, all enclosures, including the retaining wall along the north western boundary of the site, shall be erected in accordance with the approved plans and details approved under application reference 20/01947/DAC and shall be permanently retained and maintained thereafter.
- 5) The annexe building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwelling.
- 6) Demolition, site clearance or construction works shall take place only between 0800-1800 hours on Mondays to Fridays and 0800-1300 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.

End of Schedule