



Appeal Decision

Site visit made on 21 June 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

Appeal Ref: APP/Z3825/W/21/3289925

**Warley Farm Barn, Hammerpond Road, Plummers Plain, Horsham
RH13 6PE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Colin Delaney against Horsham District Council.
 - The application Ref DC/21/1059 is dated 6 May 2021 .
 - The application sought planning permission for conversion of redundant agricultural barn to dwelling and erection of single storey extension with landscaping, parking and creation of new access onto Hammerpond Road without complying with a condition attached to planning permission Ref DC/19/1360, dated 17 February 2020.
 - The condition in dispute is No 1 which states that: 'The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule below.' [Schedule reproduced at Appendix A]
 - The reason given for the condition is: 'for the avoidance of doubt and in the interest of proper planning'.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr and Mrs Colin Delaney against Horsham District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. The appeal relates to an application made under section 73 of the Town and Country Planning Act 1990 ('the Act') for a minor material amendment to planning permission granted under planning application reference DC/19/1360 ('the original permission'). It seeks to vary condition 1 of the original permission in order to substitute revised plans that would alter the development including through the addition of a detached garage.
4. The Council did not determine the application within the prescribed period. In response to the appeal, the Council has prepared a statement outlining its view that the alterations would result in material change to the original permission development and cannot be considered within the scope of an application under section 73 of the Act.
5. The appellants have suggested that it would not be reasonable or lawful to dismiss the appeal on the basis that the application was invalid given that the

application was validated by the Council, and that the appeal was also subsequently validated. In my experience however, validation is primarily an administrative process that is generally concerned with ensuring that sufficient information has been submitted to allow proper consideration of a proposal.

6. To my mind, the assessment of whether or not a proposal comprises a minor material amendment requires a judgement to be made having full regard to the circumstances of the case, and may, depending on the situation, need to be informed by evidence that could include representations made by consultees or interested parties and observation of site conditions. I am not convinced that it would necessarily be possible or reasonable to fully undertake such an assessment in advance of an application being validated. Moreover, I have not been directed to any statutory provision, case law, policy or guidance directing that a decision-maker should be precluded from making such an assessment once an application or appeal has been validated. Nor indicating that it would necessarily be inappropriate or unlawful to refuse an application or to dismiss a subsequent appeal once they had been validated.
7. In this context and on the basis of the evidence before me, I do not find the appellants' suggestion that I need not engage in the process of making a judgement as to whether the proposal is a minor material amendment to be compelling.
8. The main issue is therefore whether or not the proposal can be considered as a minor material amendment under section 73 of the Act.

Reasons

9. There is no statutory definition of a 'minor material amendment', but the Planning Practice Guidance (PPG) states that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved¹. The PPG further clarifies that a new planning application will need to be submitted where modifications to proposals are fundamental or substantial², and that section 73 cannot be used to change the description of the development³.
10. The Council highlights that the development description for the original permission does not include the creation of a garage. However, it does include parking, and I do not consider that the provision of parking within a garage would result in inherent conflict between the development and the terms of the description. In addition, I note that the original permission includes a car lodge providing for parking and storage that was similarly not included within the description. I understand that the car lodge was proposed to be formed from an existing catslide barn, but the barn would have been relocated and put to a different purpose, and it is apparent that the description of development is not exhaustive. In this context, I do not consider the lack of specific reference to the garage within the development description to be determinative.
11. Be that as it may, the garage now proposed would be a new building rather than the relocated barn. Although it would occupy a broadly similar part of the site, it would be of larger footprint and height than the car lodge, and the increase in the overall bulk and mass of the building would in my judgement be

¹ Paragraph: 017 Reference ID: 17a-017-20140306

² Paragraph: 001 Reference ID: 17a-001-20140306

³ Paragraph: 014 Reference ID: 17a-014-20140306

substantial. The building would also be fully enclosed, with glazing to all elevations, front rooflights and dormers to the rear roofslope. I find as a result that the garage would bear very little resemblance to the approved car lodge which would be of more modest size, open to the front and one side, and lacking in glazing, and that the proposal would notably increase the scale and prominence of development on this part of the site.

12. I acknowledge that the garage is only a part of the scheme as a whole. The appellants comment that the garage would form only a limited proportion of the total building mass of development on the site, and that it would be clearly subsidiary. However, it would be of broadly similar height to the permitted dwelling, and I consider that the greater scale of the garage than the car lodge would result in a pronounced change, irrespective of its footprint, scale and volume relative to the overall development on the site.
13. In addition, while it would provide parking and storage uses similar to the approved car lodge, the garage would also include accommodation at first floor level which is shown on the submitted plans as a bedroom, bathroom and living/kitchen/dining room, although the appellants also suggest the space could be used as a gym, games room or storage. The appellants advise that the space would be ancillary to the permitted dwelling, and I appreciate that the suggested uses would not be especially unusual in connection with a dwelling. Even so, I consider that the inclusion of accommodation that could be utilised as main living accommodation, albeit ancillary, would significantly alter the nature of the building and its relationship with the dwelling and neighbouring development in contrast to the parking and storage uses provided by the approved car lodge.
14. Notwithstanding that the site would continue to provide for a single dwelling with associated uses, I consider given these factors that different effects and planning considerations would arise from the proposed variation to the original permission. Even when considered in the context of the approved development taken as a whole, the nature and magnitude of the changes to the garage taken together would in my judgement result in a substantially and materially different development to that under the original permission. For these reasons, I find that the amendment could not reasonably be described as 'minor', and the PPG indicates that a new planning application should be submitted.
15. I recognise that the Council has not raised objections to the planning merits of the proposal, and I have no firm reason to find that it would lead to conflict with the development plan or cause harm to interests including neighbouring living conditions, trees, highway safety, ecology or the character or appearance of the area, landscape or historic environment. The appellants also suggest that it is likely that permission would have been granted if the garage had formed part of the original permission application. However, the acceptability or otherwise of the amended development and benefits of the development to the appellants would be a matter for the assessment of a new planning application, and do not alter my findings that the proposed variation would go beyond a minor material amendment.
16. Similarly, the fact that the appeal application has been subject to public consultation and interested parties have been able to comment on the proposal does not alter my judgement that the changes to the approved development would be too substantial to be considered under a section 73 application.

17. I therefore conclude that the proposal would result in a development that would be substantially different from the one that has been approved. Consequently, it would not be within the parameters of a minor material amendment under section 73 of the Act.

Conclusion

18. For the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR

Appendix A: Schedule to Condition 1 of Planning Permission Ref DC/19/1360

Schedule of plans/documents:

Plan Type	Description	Drawing Number	Received Date
Elevation & Floor Plan	Existing Floor Plan and Elevations - Building 4	2145/010	10.02.2020
Details plan	Visibility Splays	PCD265/008	04.07.2019
Elevation & Floor plan	Existing Floor Plans and Elevations - Buildings 1, 2 and 3	2145/011	04.07.2019
Roof plan	Proposed Roof Plan	2145/122	04.07.2019
Floor plan	Proposed Block Plan and First Floor Plan	2145/121 B	04.07.2019
Floor plan	Proposed Ground Floor Plan	2145/120 B	04.07.2019
Details plan	Area Plan	2145/125	04.07.2019
Elevation plan	Proposed Elevations	2145/130 B	04.07.2019
Location & Site plan	Site Location Plan and Proposed Site Plan	2145/005 B	04.07.2019
Design & Access Statement	Prepared by MKA Architects and dated 24.06.2019	NONE	04.07.2019
Supporting Statement	Bat Emergence Survey Report	19090	05.09.2019
Supporting Statement	Technical Note - Prepared by Transport Dynamics and dated August 2019	NONE	14.08.2019
Supporting Statement	Preliminary Ecological Appraisal Report	19090	04.07.2019
Supporting Statement	Planning Statement - Dated July 2019	NONE	04.07.2019
Supporting Statement	Arboricultural survey and Constraints - Prepared by Ben Larkham Associates Ltd and dated June 2019	tr-1468-19	04.07.2019
Supporting Statement	Phase 1 Environmental Report - Prepared by Enzygo Geoenvironmental Ltd and dated June 2018	CRM.1078.0 21.GE .R.0001.A	04.07.2019
Supporting Statement	Report on the Stability of the Frame and Foundations - Prepared by vkhp-consulting and dated October 2018	NONE	04.07.2019