



Appeal Decision

Site visit made on 6 August 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024

Appeal Ref: APP/W1850/W/23/3333453

Cork and Bottle Barn, Mansel Lacy, Herefordshire HR4 7HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Allison White against the decision of Herefordshire Council.
 - The application Ref 230681 was approved on 8 November 2023 and planning permission was granted subject to conditions.
 - The development permitted is "Proposed removal of condition 2 of planning permission 82/575 (Conversion of first floor of outbuilding to a first floor flat) - to regularise the current arrangements. The barn has been let as a full-time home since 2002 and in separate ownership".
 - The condition in dispute is No 2 which states that: Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Classes A, AA, B, C, D, E and H of Part 1 and of Schedule 2, shall be carried out.
 - The reason given for the condition is: In order to protect the character and amenity of the locality and to ensure the character of the original conversion scheme is maintained and to comply with Policy RA5 and SD1 of the Herefordshire Local Plan- Core Strategy and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Cork and Bottle Barn stands alongside Cork and Bottle Cottage. In 1983 consent was given for the barn to be converted to accommodate a first floor flat. A condition was imposed requiring the flat to be used for holiday accommodation only. Recently, the Council allowed for the condition to be removed and imposed two new conditions. These related to the approved plans and to remove Permitted Development (PD) Rights, the imposition of the second being the subject of this appeal.

Main Issue

3. The main issue is whether condition two is reasonable and necessary.

Reasons

4. The Council accepts that the proposed conversion would comply with policy RA5 of the Core Strategy [2015] (CS), relating to the re-use of rural buildings. This policy states that such development would be supported if it complied with five criteria. These require for the design of the conversion to respect the character and significance of any redundant or disused buildings, to make

provision for protected species, to be compatible with neighbouring uses, to be of permanent and substantial construction and to be capable of being converted without the need for substantial alteration or extension. A footnote of the policy explains that any approved conversions will be subject to the removal of PD Rights.

5. Also, CS Policy SD1, concerning sustainable design and energy efficiency, seeks to ensure that distinctive features of existing buildings and their settings are safeguarded.
6. The Council's reason for the imposition of the condition is to ensure the proposal would comply with the above policies, to protect the character and amenity of the locality and to ensure the character of the original building is maintained. The barn is an attractive rural building with a timber frame, and consisting of traditional materials, creating both interest and charm. The barn has a traditional, simple form that complements its rural setting. The Appellant asserts that the barn was re-erected on site in 1980, but this does not materially erode the appearance of the barn or the correct application of the Council's policies. The addition of poorly considered PD extensions and alterations could fundamentally alter the appearance of this traditional building. This would lead to harm to the character of both the barn and the surrounding area.
7. Although the barn may have been in separate residential use since around 2002, it has not been lawfully in use as such until the condition was agreed to be removed by the Council in 2023. Consequently, the imposition of the condition, when the barn became capable of being used as an open market dwelling, was reasonable in satisfaction of CS policies RA5 and SD1.
8. The Appellant suggests that as the barn has been used as a separate dwelling since 2002, the use became immune from enforcement action in 2006. Whether the barn is immune from enforcement action and/or would satisfy a Certificate of Lawfulness has not been adequately demonstrated in this case. In any event, my consideration of the merits of the imposition of the condition, in consideration of a S73 application, is primarily concerned with the relevant policy position. This is because planning decisions must be determined in accordance with the development plan unless material considerations indicate otherwise.
9. For the Council to not remove PD rights, even if applied retrospectively, would give developers an avenue to bypass important policy requirements. Accordingly, the condition to remove PD rights in this case was reasonable and necessary.
10. Accordingly, the appeal is dismissed.

Ben Plenty

INSPECTOR