



Appeal Decision

Site visit made on 2 January 2025

by **B J Sims BSc (Hons) CEng MICE MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal Ref: APP/Y3940/W/24/3352028

13 Malmesbury Road, Leigh, Swindon, Wiltshire, SN6 6RH.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with a condition subject to which a previous planning permission was granted.
 - The appeal is made by Mr Ricky Carter against the decision of Wiltshire Council.
 - The application Ref is PL/2024/01888.
 - The application sought planning permission for change of use of the former Forresters Arms to a dwelling house (Use Class C3) without complying with a condition attached to planning permission Ref 20/05927/FUL, dated 5 October 2020.
 - The condition in dispute is No 5, which states that:
Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted. In addition, there shall be no outbuildings placed on any part of the site that projects beyond the side (south west facing) elevation of the existing building.
 - The reason given for the condition is:
In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations, including prominently located outbuildings in the interests of the character and appearance of the area, and residential amenity.
-

Note

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 28 January 2025.

Decision

1. The appeal is allowed and planning permission is granted for change of use of the former Forresters Arms to a dwelling house (Use Class C3) at 13 Malmesbury Road, Leigh, Swindon, SN6 6RH, in accordance with the application, Ref PL/2024/01888, without compliance with conditions numbers 1 and 5 previously imposed on planning permission Ref 20/05927/FUL, dated 5 October 2020, and subject to the conditions set out in the **Appendix** to this decision.

Description

2. No 13 Malmesbury Road is the former Foresters Arms and now a domestic dwelling, whilst the former public house car park has been redeveloped with a row of houses set back behind a vehicle access to the side of the appeal property.

3. The application and appeal simply seek the removal of the final sentence of the disputed Condition 5 in order to allow outbuildings to be constructed within the domestic curtilage of No 13, beyond the line of the southwest elevation of the former Foresters Arms building, within the limits of permitted development. Any larger or more extensive outbuildings would still require further express planning permission.
4. A substantial outbuilding is under construction on the south western part of the site but that is not before me for assessment in this appeal; and whether it would amount to permitted development or require individual planning permission remains a matter between the Council and the property owner.

Main Issue

5. Therefore, the single main issue in this appeal is the potential effect of removing the restriction on outbuildings south west of the dwelling on the character and appearance of the site and surrounding area of Leigh.
6. The proper test is whether, on a fresh appraisal in present planning circumstances, that part of Condition 5 is necessary, relevant and reasonable.

Reasons

7. The appeal property is in an essentially rural location but forms part of an area of relatively loose-grained, mainly residential frontage development of varied style and design on both sides of Malmesbury Road. The surrounding countryside landscape is not protected by any specific planning designation but hitherto the existence of gaps between the buildings has been recognised as a contributor to the rural character of the settlement of Leigh.
8. This consideration evidently gave rise to the imposition of the restriction on outbuildings under permitted development rights contained in the disputed final sentence of Condition 5 of the original permission to convert the Foresters Arms to a dwelling.
9. The Council relies upon the appeal decision on a proposal similarly to convert a public house into the present Yew Tree Cottage. In that case, the Inspector recognised that an open part of a residential the site can become unacceptably obstructed by outbuildings up to 4m high, erected as permitted development, with no control over their design and appearance. Otherwise however, that case is not directly comparable with the present appeal, not least because Yew Tree Cottage is in a more isolated rural location. But the same principle applies to the question of whether the restriction disputed in this appeal is necessary and reasonable, albeit each case is decided on individual merit in any event.
10. Circumstances have changed since the imposition of the disputed condition. Particularly, a comparatively high-density new row of two semi-detached and three terraced houses has been erected on the former Foresters Arms car park. This has largely closed the previous gap in the built frontage to Malmesbury Road that had been maintained by the pub car park.
11. The result is that the immediate area has become much more urban, and No 13 is virtually surrounded by residential development, except for the open country to its rear. Aside from the uncompleted building at the south western boundary which, for

the reason explained above, is not relevant to this appeal, a much-reduced gap still remains between the new houses and No 13 itself.

12. I do not consider this remaining gap to be of any great value to local rural character in present circumstances, where the newly intensified built development has added to the local variety in built character. In my opinion, outbuildings, constructed to the limits of permitted development, within the space between the south west elevation and the side boundary, shared by No 13 with its modern neighbours, would not harm significantly the overall rural character of the wider area. Nor do I consider that this would cause any harm to neighbouring amenity, given remaining separation distances.
13. There is some third-party concern regarding the potential introduction of commercial business use of the appeal property, with implications for traffic generation, noise, disturbance and pollution. However, a change to any such use would require separate planning approval and this concern carries no weight in the present appeal. There is no other matter to affect my decision.
14. In refusing the application, the Council cited Policies CP51 and CP57 of the adopted Wiltshire Core Strategy. Policy CP51 protects the landscape and requires its conservation in a range of aspects, including local distinctive character of settlements and their landscape settings and important views. Policy CP57 requires any development to be of high-quality design, responding positively to its landscape setting and the need to safeguard amenity. These policies are essentially consistent with national policy.
15. For the reasons explained above, I consider that the proposed deletion of the final sentence of the disputed Condition 5 of the original permission to convert the Forresters Arms into a dwelling would not result in any unacceptable conflict with either Policy CP51 or CP57 or the development plan as a whole.
16. Accordingly, I conclude that this appeal should be allowed and a new permission granted for the conversion of the Forresters arms into a dwelling without complying with the final sentence of Condition 5 of the original permission but otherwise subject to the same conditions as applicable, save for Condition 1, commencement, which no longer applies.

B J Sims

INSPECTOR

APPENDIX

PLANNING CONDITIONS

1. The development hereby permitted shall be carried out in accordance with the following approved plans:

Location Plan Reference: TP01 received 07 September 2020

Block Plan Reference: TP02 received 07 September 2020

Proposed Elevation and Floor Plans 2036.2 received 16 July 2020

Reason: For the avoidance of doubt and in the interests of proper planning.

2. Prior to the first occupation of the development hereby approved or, if it relates to soft landscaping, in the first planting season following the first occupation of the development hereby approved, a scheme of hard and soft landscaping shall be completed on the site in accordance with the details which shall first been submitted to and approved in writing by the Local Planning Authority. The scheme of hard and soft landscaping must consist of the details of which shall include:-

- o location and current canopy spread of all existing trees and hedgerows on the land; o full details of any to be retained, together with measures for their protection in the course of development;
- o a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- o finished levels and contours;
- o means of enclosure; o Details of means of enclosure to prevent vehicular access to the public highway other than via the access detailed on approved plans AP01 and AP02 o car park layouts including space for turning;
- o other vehicle and pedestrian access and circulation areas; o all hard and soft surfacing materials;
- o minor artefacts and structures (e.g. refuse, cycle and other storage units, lighting etc
- o tree(s), of a size and species and in a location to be agreed in writing with the Local Planning Authority, shall be planted in accordance with BS3936 (Parts 1 and 4), BS4043 and BS4428

All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority.

Reason: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, to ensure a satisfactory landscaped setting for the development.

3. For the avoidance of doubt the sole means of vehicular access to and from the site to the public highway shall be in the position detailed on approved plans TP01 and TP02 only and no other access shall be used to enter or exit the site, whether currently provided or otherwise. Once the landscaping scheme as required by condition 3 above has been provided on site the means of enclosure along the frontage of the site adjacent to Malmesbury Road (B4040) shall be retained and maintained in the approved form without modification.

Reason: To ensure access to the site is provide in a safe manner in the interests of highway safety.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 or The Town and Country Planning (General Permitted Development) (England) (Amendment) (No. 2) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

Reason: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations, including prominently located outbuildings in the interests of the character and appearance of the area, and residential amenity.