



Appeal Decision

Site visit made on 23 March 2025

by Mrs Chris Pipe BA(Hons), DipTP, MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal Ref: APP/G2435/D/25/3358741

Between Ways, Gracedieu Lane, Belton LE12 9TW

- 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 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 M Glover against the decision of North West Leicestershire District Council.
- The application Ref is 24/00593/VCU.
- The application sought planning permission for remodelling works to dwelling with increase in roof height to create first floor bedroom accommodation, with two-storey side/rear extension (resubmission of 21/01144/FUL) at Between Ways Gracedieu Lane Belton Loughborough without complying with condition 2 and 3 attached to planning permission Ref 21/01502/FUL, dated 17 December 2021.

The conditions in dispute are Nos 2, 3 and 4 which state that: 2. The development, hereby permitted, shall be carried out strictly in accordance with the following plans and drawings unless otherwise agreed in writing with the Local Planning Authority: Drawing 21.274.01.E Site Layout, received by the Local Planning Authority on 8th November 2021; Drawing 21.274.02.E Proposed Details, received by the Local Planning Authority on 8th November 2021; and Drawing 21.274. BP. D Block Plan, received by the local Planning Authority on 8th November 2021. Unless otherwise required by another condition of this permission.; 3. The external materials to be utilised in the development, hereby permitted, shall be in strict accordance with those specified in the application forms and as shown on drawings numbered 2.274.01E, 21.274.02E and 21.274.BP.D. The above applies unless alternative external materials are first submitted to and approved in writing by the Local Planning Authority; and 4. Prior to the completion of the roof, details of the positioning on the site and the design of a bat box shall be submitted to and approved in writing by the Local Planning Authority. The bat box shall be erected as approved within 3 months of occupation of the extensions and shall be retained for the lifetime of the property.

- The reasons given for the conditions are: 2. In the interests of certainty and to ensure the development is carried out in accordance with the approved plans and details; 3. To ensure a satisfactory standard of external appearance in the interests of maintaining the character and appearance of the streetscape and surrounding environment; and 4. To ensure ecological enhancement and protect biodiversity.
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Decision

1. The appeal is allowed and planning permission is granted for remodelling works to dwelling with increase in roof height to create first floor bedroom accommodation, with two-storey side/rear extension (resubmission of 21/01144/FUL) at Between Ways Gracedieu Lane Belton Loughborough in accordance with the application Ref 24/00593/VCU, without compliance with condition numbers 2, 3 and 4 previously imposed on planning permission Ref 21/01502/FUL and subject to the following conditions:

- 1) The development hereby permitted shall begin before 17.12.2024.

- 2) The development hereby permitted shall be carried out in accordance with the following plans and drawings numbered 21.274.07, 21.274.08, 21.274.BP3 and lbstock bat brick detail.
- 3) The external materials to be utilised in the development, hereby permitted, shall be in accordance with those specified in the application forms and as shown on drawings numbered 21.274.07, 21.274.08 and 21.274.BP3. The above applies unless alternative external materials are first submitted to and approved in writing by the Local Planning Authority.
- 4) The bat box hereby approved shall be installed within 3 months of occupation of the extensions and shall be retained for the lifetime of the property.

Procedural Matter

2. Section 73(1) of the Town and Country Planning Act 1990 applies, subject to subsection (4), to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted.
3. Section 73(4) states: This section does not apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun. In relation to this appeal the decision date for the original permission 21/01502/FUL was 17 December 2021 with a three year timeframe for commencement of development. The decision date for application 24/00593/VCU was 23 December 2024, which is after the time frame to implement the permission. Information has been submitted by the appellant relating to commencement of development, nevertheless there is disagreement between parties as to whether the development was implemented within the timescale permitted.
4. Notwithstanding this in *Powergen UK plc v Leicester City Council (2001) 81 P. & C.R. 5* the Court of Appeal confirmed that s.73(4) did not affect an authority's capacity to determine an application beyond the time frame for implementation, provided the application itself was made in time. *"Subsection (4) indicates that the section clearly does not apply where the application purportedly made pursuant to it is made at a time when development had not been begun within the time specified by a condition. However, what is the position where the application is made in time but the consideration by the authority of that application is after the expiry of time? Does the Authority lose jurisdiction by reason of the expiry of time? In my judgment, based in part on the use of the verb "apply" in both subsections (1) and (4), the crucial time is the time of the application and there is no subsequent loss of jurisdiction to consider the matter. We have heard no submissions to the contrary."*
5. Applying *Powergen* to this appeal, the application to vary the conditions was made on 9 May 2024. The development granted permission under application 21/01502 had to commence within three years of 17 December 2021. On this basis the application to vary the conditions, based on *Powergen* was in time and could be determined. It follows the appeal is valid.
6. Planning Practice Guidance, Flexible Options for Planning Permissions provides guidance relating to time limits and section 73 applications – "As a section 73 application cannot be used to vary the time limit for implementation, this condition

must remain unchanged from the original permission.”¹ Therefore, should the appeal be allowed the original timeframe for commencement would be imposed and it would be for the Council to determine if the development was lawfully commenced before the relevant date.

7. The decision notice relates to conditions 2 and 3 previously imposed on planning permission 21/01502/FUL, notwithstanding this the planning application form for variation of conditions submitted with the appeal states the application relates to conditions 2, 3 and 4. The form also states: “*RELATING TO CONDITION 4, WE WISH THIS CONDITION TO REFER TO DRAWINGS 21.274.07 & 08 FOR BAT BOX LOCATION, & IBSTOCK BAT BRICK DETAIL*”. On this basis condition 4 has been included in the description of development for clarity.

Main Issues

8. The main issues are the effect that modifying conditions 2 and 3 would have on the character and appearance of the area; and condition 4 on bats.

Reasons

Character and Appearance

9. The appeal site comprises a modest detached bungalow within an open rural setting, surrounded by fields and detached from the nearby built-up area of Belton. Properties within the wider area vary in terms of design and form.
10. The original permission² permitted remodelling works to appeal property, increasing the roof height to create first floor bedroom accommodation, with two-storey side/rear extension. I understand previous amendments³ to the redevelopment of the appeal site allowed for raising of the roof, alterations to sitting room and additional extension to the rear of lounge, introduction of balcony to rear and alterations to porch. The Planning Officer Report for the 2022 approval confirmed that “*whilst the proposed additions would increase the size of the property, the scale and design of the proposed extensions and alterations would not be out of keeping with the scale, character or appearance of the previously approved extended dwelling.*” I agree, nevertheless the development permitted would change the appearance of the existing modest bungalow significantly.
11. The proposed alteration to the design would again increase the scale of the approved extended property. Notwithstanding this the design and scale would not be incongruous or disproportionate to the area due to the appeal sites isolated location and the previous permissions allowing substantial redevelopment.
12. The extended property would be obvious in the open landscape, however the resulting built form would not introduce a substantially different form of development and as such would not disrupt the rural character. I find that the proposed development would not harm the character and appearance of the area.
13. There is no conflict with Policies D1 and S3 of the North West Leicestershire Local Plan (2021) which seek amongst other things that developments are well designed and consider the appearance and character of the landscape. There is no conflict

¹ Paragraph: 014 Reference ID: 17a-014-20140306 and Paragraph: 015 Reference ID: 17a-015-20140306

² 21/01502/FUL

³ 22/00168/VCU

with the Good Design for North West Leicestershire Supplementary Planning Document for new developments which provides guidance relating to design aspirations for developments.

14. There is also no conflict with the National Planning Policy Framework (2024) which seeks to ensure developments are of good design appropriate and sympathetic to their surroundings.

Bats

15. Details of the proposed bat box and location have been provided. A copy of the Leicestershire County Council Ecology and Biodiversity Advice has been provided and confirms that the details submitted are sufficient to discharge condition 4. I agree. The reimposition of condition 4 would therefore not be necessary.

Conclusion and Conditions

16. For the reasons set out above, I conclude that the appeal should be allowed.
17. I have amended the timescale condition such that it reflects the date of the original permission. A decision made under s73 cannot extend the time period within which a development must start.
18. For certainty, I have imposed a condition establishing the approved plans and materials. In the interests of providing ecological enhancements, I have imposed a condition relating to the timescale to install the bat box.

Chris Pipe

INSPECTOR