

WYRE FOREST DISTRICT COUNCIL

Planning Committee

08 February 2011

PLANNING AND ENFORCEMENT APPEALS

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1366 09/0588/OUTL	APP/R1845/A/10 /2128377/NWF	Arab Investments Ltd	FORMER CARPETS OF WORTH FACTORY SEVERN ROAD Redevelopment of site to provide a mixed use development consisting of 159No. residential properties, Class A retail uses, Class B employment, Class C1 hotel and Class D2 assembly & leisure (outline)	HE 18/05/2010	29/06/2010		02/03/2011 Earl Baldwin Suite,	

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1371 10/0155/CERT	APP/R1845/X/10 /2135944	Mr N Newman	44 PARK LANE KIDDERMINSTER DY116TE Certificate of proposed lawful development:- Erection of three storey rear extension	WR 15/09/2010	27/10/2010			Dismissed 07/01/2011
WFA1372 10/0147/FULL	APP/R1845/A/10 /2137213/NWF	Mr S Mahoney	GROVE FARM DRY MILL LANE DOWLES BEWDLEY DY122LQ Change of use of redundant agricultural building (milking parlour/barn) to form 4 no. two-bedroom residential units with associated access and parking	WR 29/09/2010	10/11/2010		06/12/2010	Allowed With Conditions 12/01/2011

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1374 08/1056/CERT	APP/R1845/X/10 /2137298	Mr D Warren	8 BRIAR HILL CHADDESLEY CORBETT KIDDERMINSTER Certificate of Lawfulness Application for a proposed rear extension	WR 01/10/2010	12/11/2010		10/01/2011	
WFA1375 10/0274/FULL	APP/R1845/A/10 /2138592/NWF	Mr J Matthews	OXBINE CALLOW HILL ROCK KIDDERMINSTER DY149XB Demolition of existing bungalow and replacement with 3No dwellings (amendment to schemes previously approved under applications 09/0505/FULL and 09/0506/FULL	WR 19/10/2010	30/11/2010		06/01/2011	

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1376 10/0500/FULL	APP/R1845/A/10 /2140347/NWF	Mr G Attwood	ROBIN HOOD DRAYTON ROAD BELBROUGHTON STOURBRIDGE DY9 Re-Erection of former pig-sty in form previously approved under consent 10/0323 for use as an outdoor bar area	HE 17/11/2010	29/12/2010		05/04/2011 Earl Baldwin Suite,	
WFA1377 10/0475/FULL	APP/R1845/A/10 /2142256/NWF	Mr Russell Stevens	PARKHALL BIRMINGHAM ROAD KIDDERMINSTER Erection of timber framed building for storage of marquees and associated fixtures and fittings (Resubmission of 10/0141/FULL)	WR 14/12/2010	25/01/2011			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1378 10/0205/FULL	APP/R1845/A/10 /2142317/WF	Mr J Atkinson	ADJACENT TO 140 BEWDLEY HILL KIDDERMINSTER DY116BT Erection of a detached dwelling, creation of rear access with garage	WR 17/12/2010	28/01/2011			
WFA1379 10/0428/FULL	APP/R1845/A/11 /2143452/NWF	Banner Homes Midlands Ltd	CASTLE ASH BIRMINGHAM ROAD BLAKEDOWN KIDDERMINSTER Construct new access, access road and erection of 4 detached houses together with new garage for existing house	HE 10/01/2011	21/02/2011			

Appeal and Application Number	Planning Inspectorate Reference	Appellant	Site (Proposal)	Form of Appeal and Start Date	Written Reps. or Statement Required By	Proof of Evidence required by	Public Inquiry, Hearing or Site Visit date	Decision
WFA1380 10/0490/FULL	APP/R1845/D/11 /2143644	Mr & Mrs Hoare	WOODLAND COTTAGE TANNERS HILL BEWDLEY DY122LH Proposed first floor extension with balcony	WR 13/01/2011				



Appeal Decision

Site visit made on 6 December 2010

by James Ellis LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 January 2011

Appeal Ref: APP/R1845/A/10/2137213

The Carhouse, Grove Farm, Dowles, Bewdley, Worcestershire DY12 2LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr S Mahoney against the decision of Wyre Forest District Council.
 - The application Ref 10/0147/FULL, dated 15 March 2010, was refused by notice dated 26 May 2010.
 - The development proposed is change of use of redundant agricultural building (milking parlour/barn) to form 4 no. two-bedroomed residential units.
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Decision

1. I allow the appeal, and grant planning permission for change of use of redundant agricultural building (milking parlour/barn) to form 4 no. two-bedroomed residential units at The Carhouse, Grove Farm, Dowles, Bewdley, Worcestershire DY12 2LQ in accordance with the terms of the application, Ref 10/0147/FULL, dated 15 March 2010, subject to the conditions in the Schedule of Conditions set out below.

Procedural matter

2. The appeal property is referred to as The Carhouse in the planning application form. However, it is referred to as The Parlour on the appeal form. For the purposes of this determination, I shall follow the planning application.

Main Issue

3. The main issue is the effect of the proposal on highway and pedestrian safety.

Reasons

4. The appeal site is accessed from Dry Mill lane which is to the north-west of Bewdley town centre. The appeal site is part of an agricultural holding and is occupied by a former agricultural building which is built of brick with a tiled roof. The proposal is to convert the building to four two-bedroom residential units. A parking space for six vehicles would be provided.
5. Dry Mill Lane is a rural lane which has a speed limit of 30 mph. To the south-east, Dry Mill Lane connects into roads serving an adjacent residential area, namely The Lakes Road and Baldwin Road. Dry Mill Lane joins Hop Pole Lane to the north-west, beyond the appeal site, and then continues to a car park for visitors to the Wyre Forest Nature Reserve.

6. I am advised that the carriageway width of Dry Mill Lane in the vicinity of the appeal site varies between 3 metres and 3.5 metres, that the verge on the western side is about 1.3 metres wide and that on the north-eastern side between 1.2 and 1.5 metres. As I saw on my site visit, there are a number of informal passing places along the lane, including one opposite the appeal site. About 38 metres to the south-east of the appeal site access is a pedestrian footway access into the residential road network at Newton Close.
7. A traffic and speed survey undertaken by the Appellant's Highway Consultant in September 2010 recorded that eighty-five percentile speeds on Dry Mill Lane were under 30 mph and that the road is lightly trafficked with morning peak hour recorded flows equating to one vehicle every 4.3 minutes, and in the evening peak hour to one vehicle every 2.7 minutes. In the average hour during the daytime (between 7am and 7pm) there is one vehicle every 4.4 minutes. As such, Dry Mill Lane would meet the criteria for being designated as a Quiet Lane¹. These are roads which have low flows of motorised vehicles travelling at low speeds and are therefore suitable for shared use by walkers, cyclists, equestrians and motorists. It was also drawn to my attention that no accidents have occurred in the last 5 years involving the access to the appeal site, the section of Dry Mill lane between Hop Pole Lane and The Lakes Road/Baldwin Road, and the junction of Dry Mill Lane with The Lakes Road/Baldwin Road.
8. The Appellant's Highway Consultant has used the TRICS database to estimate that the proposal would result in an extra 32 traffic movements per day, with 3 of these being during the morning peak hour and 3 during the evening peak hour. This estimate seems reasonable to me. The overall morning peak hour flow for Dry Mill Lane would then equate to one vehicle every 3.5 minutes, and that for the evening peak hour to one vehicle every 2.4 minutes. Even with the additional traffic from the proposal, predicted flows along Dry Mill Lane would be well below the maximum designated flow for a Quiet Lane. Having regard to this, the availability of some passing places and verges, and the accident statistics, I consider that there would be no significant risk to the safety of pedestrians, equestrians and cyclists using Dry Mill Lane from increased traffic movements if the proposal were to be implemented.
9. On my site visit, I drove along Dry Mill Lane to its junction with The Lakes Road/Baldwin Road. The junction is complicated but I found that it can be negotiated without difficulty provided due care is taken. The junction between Dry Mill Lane and Hop Pole Lane also requires care, but I consider that its location in relation to the appeal site and main routes is such that it would be unlikely to be used on a regular basis by occupiers of the proposal. The accident statistics also suggest that the junctions are not dangerous. I therefore find that increased traffic movements at the junctions, arising from the proposal, would not compromise highway safety.
10. Turning now to the appeal site's access with Dry Mill Lane, the Manual for Streets, published in 2007, contains guidance relating to lightly trafficked lanes in rural areas. Section 7.7 of the manual refers to visibility splays at junctions. It says that an X distance of 2.4 metres should normally be used in most built up situations, but that a minimum figure of 2 metres may be considered in some very lightly trafficked and slow speed situations. It goes on to say that

¹ Department for Transport Circular 02/2006 and The Quiet Lanes and Home Zones (England) Regulations 2006 refer.

- using this value will mean that the front of the vehicle will protrude slightly into the carriageway of the major arm, and that the ability of drivers and cyclists to see this overhang from a reasonable distance, and to manoeuvre around it without undue difficulty, should be considered. The manual also indicates that the Y distance should be based on values for Stopping Sight Distances (SSD). The suggested SSD for 30 mph is 40 metres.
11. Having regard to the above, I consider that visibility splays of 2 metres x 40 metres are appropriate for the appeal site's access with Dry Mill Lane. As I saw on my site visit, with an X distance of 2 metres, the access has Y distances of in excess of 40 metres both to its the north-west and to its south-east. Moreover, the alignment of the road is such that vehicles protruding from the access would be seen from a reasonable distance by other drivers and cyclists using Dry Mill Lane. In addition, I consider that they would be able to manoeuvre around a protruding vehicle, should the need arise, because of the passing place on the other side of the road to the access. I therefore find that the proposed access would be acceptable in terms of highway safety.
 12. The Council has drawn my attention to a previous appeal decision Ref: APP/R1845/A/02/1085947, dated 13 August 2002, and which concerned 10 Newton Close, Bewdley. That appeal related, amongst other matters, to a new access onto Dry Mill Lane. The previous Inspector found that the proposal before him would result in harm to highway safety, but in the context of that proposal having a substandard visibility splay. I have, however, found that the visibility splay for the proposal before me would be acceptable. The scheme the subject of the previous appeal decision can therefore be distinguished from that before me and I give little weight to it.
 13. I therefore conclude that the proposal would not result in material harm to highway and pedestrian safety. In this respect, it would not be contrary to saved Policy RB.1 (v) of the Wyre Forest Local Plan, adopted in 2004, and Policy CP03 of the Wyre Forest Core Strategy, adopted in 2010.
 14. Other issues raised by third parties include the principle of the development, the effect of the proposal on the Green Belt and the character and appearance of the area, the effect of the proposal on the living conditions of the occupiers of a neighbouring property in terms of overlooking (leading to a possible loss of privacy) and outlook, precedent, that the site was prepared for development and works carried out without planning permission, and that the building has not suffered misuse.
 15. I am satisfied from the evidence before me that the proposal complies with planning policies which relate to the re-use and adaptation of rural buildings. The appeal site is not in the Green Belt. The site of the building which would be converted is lower than Dry Mill Lane and the proposed units would have limited areas of residential curtilage and communal amenity area. Moreover, future permitted development rights relating to the proposal could be controlled through the imposition of a planning condition. I therefore consider that the proposal would not be highly visible within the landscape and that it would have little impact on the character and appearance of the area.
 16. The relationship of the proposal to existing residential properties and its distance from them is such that it should not have a material adverse impact on privacy or outlook. As regards precedent, each application should be considered on its own individual merits and, in any event, I have found that the proposal would not result in harm. There is no detailed evidence before me to

- persuade me that work to the building and to the appeal site have taken place without planning permission. The building may or may not have suffered from misuse but this point has not been material to my deliberations. I can, therefore, only give little weight to the issues raised by third parties.
17. The Council suggested a number of conditions in addition to the standard commencement of development condition. Some of the conditions sought to protect the character and appearance of the area and referred to materials, details of windows and doors, means of enclosure, landscaping, retained hedges, and the removal of certain permitted development rights. Other conditions were in the interests of protecting the integrity of the building and referred to control over rebuilding works, and a requirement that works be carried out in accordance with a structural survey. Further conditions referred to the development being carried out in accordance with the approved plans in the interests of good planning, the submission of a drainage scheme because there are no public foul or surface water sewers in the vicinity of the appeal site, and the undertaking of an updated ecological survey in the interests of nature conservation.
 18. The Appellant contested the breadth of the condition concerning the removal of permitted development rights and suggested that there would be no need to remove rights given under Classes A and B of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended. However, given the nature of the proposal and its location in the open countryside, I think that it is important for the Council to be able to retain control over the development referred to in Classes A and B of Part 2. Accordingly, I shall impose the condition as suggested by the Council.
 19. For the avoidance of doubt, I have also altered the landscaping condition suggested by the Council, to require the submission of a scheme of landscaping for the Council's approval. This is because I consider that the landscaping scheme shown on the submitted plans, whilst helpful, is somewhat lacking in detail. Subject thereto, I consider all the suggested conditions to be reasonable and necessary and I have broadly followed the Council's suggested wording. I have, however, amended the wording where I considered it appropriate to do so for the sake of clarity and compliance with guidance given in Circular 11/95.
 20. For the reasons given above, I conclude that the appeal should be allowed.

James Ellis

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: SM:GF 03, SM:GF 04, SM:GF 05a, SM:GF 06, SM:GF 07, and SM:GF 08.
- 3) The development hereby permitted shall not commence until details of a drainage scheme for the disposal of surface water and foul sewage have

- been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved drainage scheme has been implemented.
- 4) The development hereby permitted shall not commence until an updated ecological survey has been undertaken by a suitably qualified person and which shall assess the building and site for protected species. The survey which shall recommend any necessary mitigation measures and biodiversity enhancements shall be submitted to the local planning authority for approval. The approved mitigation measures and biodiversity enhancements shall be implemented prior to first occupation of the development unless otherwise agreed in writing by the local planning authority.
 - 5) This permission shall be implemented in accordance with the structural report prepared by Structural Design Partnership, reference T.08.223.ARD.T.DJC dated 23 September 2008 unless otherwise agreed in writing by the local planning authority. Should any further repairs be deemed necessary, they shall not be commenced until details of the repairs have been submitted to and approved in writing by the local planning authority. The repairs shall be carried out in accordance with the approved details.
 - 6) There shall be no rebuilding of the existing structure whatsoever and should any portion of the existing structure be removed or collapse (whether as a result of the carrying out of the works hereby approved, or otherwise) reinstatement shall only take place when planning permission for the reinstatement works has been obtained.
 - 7) All external materials shall match in colour, form and texture those of the existing building and there shall be no variation without the prior written approval of the local planning authority.
 - 8) The development hereby permitted shall not commence until detailed plans and sections of the proposed windows and doors together with details of their materials and finish have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
 - 9) The development hereby permitted shall not commence until details of all means of enclosure have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the means of enclosure have been completed in accordance with the approved details.
 - 10) The development hereby permitted shall not take place until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall specify the species, density, planting size and layout of any trees, hedges or hedgerow and shrubs to be planted. The approved scheme shall be carried out in the first planting scheme following the first occupation of the dwellings hereby permitted or completion of the development, whichever is the sooner. Any new trees, hedges or hedgerow, or shrubs, which within a period of five years of the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced with others of similar size, species and number as soon as is

reasonably practicable and, in any case, not later than the end of the first available planting season.

- 11) All existing hedgerows shall be retained and protected from damage for the duration of the works by the erection of protective fencing in accordance with British Standard 5837: Trees in Relation to Construction. Any hedges or hedgerow which are removed without the consent of the local planning authority or which die or become seriously damaged or diseased within five years following completion of the development hereby permitted shall be replaced as soon as reasonably practicable and, in any event, not later than the end of the first available planting season with plants of such size and species and in such positions as specified by the local planning authority.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no development as specified in Classes A, B, C, D, E and G of Part 1 of Schedule 2 to the Order; Classes A, B and C of Part 2 of Schedule 2; and Class A of Part 40 of Schedule 2, other than that expressly authorised by this permission, shall be carried out.



Appeal Decision

Site visit made on 6 December 2010

by James Ellis LLB (Hons) Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2011

Appeal Ref: APP/R1845/X/10/2135944

44 Park Lane, Kidderminster, Worcestershire DY11 6TE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr N Newman against the decision of Wyre Forest District Council.
 - The application dated 18 March 2010, under Ref: 10/0155/CERTP was refused by notice dated 11 August 2010.
 - The application was made under section 192(1) (b) of the Act.
 - The development for which a certificate of lawful use or development is sought is a proposed domestic extension to rear of dwelling as shown on drawings 506/09 SLP & 506/09 PPE.
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Decision

1. I dismiss the appeal.

Procedural matter

2. The Council's refusal notice dated 11 August 2010 does not refer to the application's reference number. However, documentation on the file suggests that the reference number is 10/0155/CERTP. I have therefore used that reference number for the purposes of this decision letter.

Reasons

3. The Appellant is seeking an LDC in respect of the proposed erection of a three storey extension to the south-eastern elevation of 44 Park Lane, an end of terrace house. The proposed extension would have a pitched roof flanked by narrow flat roofs to either side of it. I understand that the extension would be about 1.3 metres from the appeal site's boundary with 45 Park Lane and that its height from ground level to the edge of the flat roof would be about 8 metres.
4. The issue for consideration is whether the proposed extension would be permitted development having regard to Article 3 and Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (the GPDO). The planning merits or otherwise of the proposed extension is not a factor which I can take into consideration.
5. Class A of Part 1 to Schedule 2 of the GPDO refers to the enlargement, improvement or other alteration of a dwellinghouse as being permitted

- development, subject to it meeting a number of tolerations and restrictions set out in Class A.1. The Council have not suggested that the proposal would fail to meet the tolerations and restrictions set out in Class A.1 (a), (b), (c), (d), (e), (f), (h) and (i). However, Class A.1 (g) remains in contention. This is that development is not permitted if the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwellinghouse, and the height of the eaves of the enlarged part would exceed 3 metres.
6. The Appellant has contended that the proposed extension does not have eaves and that, accordingly, it would comply with Class A.1 (g) of Part 1 to Schedule 2 of the GPDO. There is no definition of "eaves" or "eaves height" within the GPDO. However, Technical Guidance entitled 'Permitted development for householders' (the Guidance) which was published by the Department for Communities and Local Government in August 2010 does refer to "eaves" and "eaves height". While ultimately a matter for the court, the Guidance represents the Department's current view and is thus a material consideration to which I attribute substantial weight.
 7. The Guidance states that for the purposes of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall. It goes on to say that the height of the eaves will be measured from the natural ground level at the base of the external wall of the extension to the point where the external walls would meet (if projected upwards) the upper surfaces of the roof slope, and that parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.
 8. In the case of the proposal, the Guidance clearly indicates that eaves height should be measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the flat roof. Given that the height of the flat roof of the proposal would be about 8 metres above ground level, I therefore find that its eaves height would exceed that of 3 metres, as referred to in Class A.1 (g).
 9. The Appellant has argued that the Guidance is in conflict with the legislation as "eaves" are clearly defined and would not normally, through any dictionary or other definition, be considered to refer to the edge of all roof forms. I do not, however, accept that this is the case. As I have indicated, there is no definition of "eaves" or "eaves height" within the GPDO and there is no longer any need to refer to a dictionary definition of "eaves", now that clarity has been provided by the Guidance. The Appellant has drawn my attention to a previous appeal decision (Ref: APP/G2245/X/09/2111266, dated 12 January 2010) where the Inspector relied on a dictionary definition of "eaves" for the purposes of his determination. However, I can only give limited weight to the previous appeal decision because it pre-dates the publication of the Guidance.
 10. I therefore find that the proposal would not be permitted development as referred to in Article 3 and Class A of Part 1 to Schedule 2 of the GPDO because the extension would not comply with Class A.1 (g). Consequently, the express grant of planning permission is needed.
 11. Representations from third parties suggest that the proposal should have been dealt with as if the appeal site was Article 1(5) land for the purposes of the GPDO. However, the evidence is that it is not within a Conservation Area so this approach would be incorrect. It is also contended that the proposal would not comply with Class A.1 (d) and A.1 (h) of Part 1 to Schedule 2 of the GPDO.

This is not the view of the Council and, in the light of my conclusion nothing turns on this in any event. I have already noted that the planning merits are not before me in an appeal of this nature.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use was correct and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

James Ellis

Inspector