

**12. S.73 - VARIATION OF CONDITIONS 4 - WORKING AREA AND 5 - PERSONNEL NUMBERS ON NP/S/0110/0072 FOR CHANGE OF USE TO USE UPPER FLOOR OF GARAGE AS AN OFFICE, BIRCH LEA, HOLLOW MEADOWS (NP/S/0313/0241 P.2285 426968/387129 1/6/2015/CF)**

**APPLICANT: MR & MRS KEITH POPPLEWELL**

**Site and Surroundings**

Birch Lea is a detached four bedroomed rendered property with a Hardrow tiled roof. It is one of a group of non-traditional buildings sited along a private track which runs below and parallel to the A57 Sheffield to Manchester Road at Hollow Meadows. Vehicular and pedestrian access to the property is via the private track immediately off the A57. The subject of this application is a detached triple garage, which lies immediately adjacent to the dwellinghouse at Birch Lea.

Retrospective planning permission was granted in 2010 for the change of use of the upper floor of this garage from its former use as a games room to an office (NP/S/0110/0072). The office space is used for a telephone and internet based business known as 'The Pensions Office Ltd' but the premises are currently the subject of investigation by the Authority's Monitoring and Enforcement Team because there is evidence that the business has been operated in breach of conditions attached to the 2010 permission.

**Proposal**

The current application seeks retrospective planning permission to vary conditions 4 and 5 attached to Planning Decision Notice NP/S/0110/0072, which in turn granted retrospective planning permission for the change of use of the upper floor of garage to an office within Use Class B1(a)

Condition 4 attached to Planning Decision Notice NP/S/0110/0072 states: "The proposed use as internet and telephone based office work, in connection with Pension Transfers shall not take place other than within the area marked in red on the submitted plan". This condition was imposed on the permission to enable the National Park Authority to retain control over the extent of the use and to prevent any adverse effect upon the character of the area and the interests of nearby residents

Condition 5 attached to Planning Decision Notice NP/S/0110/0072 states: "The use hereby permitted shall be carried out only by Keith Popplewell and two other members of staff and shall be discontinued on the date when Keith Popplewell ceases to occupy the premises". This condition was imposed because permission had been granted for the change of use of the upper floor of the garage as an exception to the National Park Authority's normal policy because of the applicant's personal circumstances. The Authority therefore wished to retain control over the form and scale of development to protect the character of the locality.

As submitted, the current application to vary these conditions by seeking permission to use the ground floor of the garage as well as the upper floor for office space. The submitted plans showed that a total of eight staff including a manager would be employed at the premises and would have been accommodated across the two floors. The application has subsequently been revised and now seeks permission to use the ground floor of the garage for storage space ancillary to the office use on the upper floor, and the amended plans now show five staff including a manager would work from the upper floor of the garage.

There are no alterations to the external appearance of the garage proposed in either the original submission or the revised application.

## **RECOMMENDATION:**

That the application be **APPROVED** subject to the following conditions:

1. The garage building subject of this application and the use hereby permitted shall remain ancillary to the ordinary domestic use of the existing dwelling house known as Birch Lea, and the dwelling house and the garage shall be maintained in the same planning unit in a mixed use of C3 dwelling and B1(a) office throughout the lifetime of the development hereby permitted.
2. The B1(a) office use of the garage hereby permitted shall be restricted to the upper floor of the garage, which on cessation of the use hereby permitted shall be used for no other purposes other than for a domestic use incidental to the quiet enjoyment of the existing dwelling house known as Birch Lea.
3. There shall be no more than three employees accommodated within the office space on the upper floor of the garage at anytime during the lifetime of the development hereby permitted.
4. The use of the ground floor of the garage building subject of this application shall be restricted to the garaging of domestic vehicles and storage of bicycles and shall be maintained free of any obstruction to these designated uses throughout the lifetime of the development hereby permitted.
5. The hours of opening of the office space hereby permitted to visiting members of the public (including clients, brokers, sales people or any other person not directly employed by the business operating from the upper floor of the garage) shall be restricted to 9 a.m. to 5.00 p.m, Monday to Friday. There shall be no opening of the premises to visiting members of the public on Saturday/Sundays or Bank Holidays.
6. There shall be no deliveries to or from the premises before 9am or after 5pm and no deliveries to or from the premises whatsoever on Saturday/Sundays or Bank Holidays.

## **Key Issues**

Whether the extent of the proposed use and the form and scale of development arising from the proposed variation to the Conditions 4 and 5 attached to Planning Decision Notice NP/S/0110/0072 would result in any adverse effect upon the character and amenities of the area or the living conditions of nearby residents.

## **History**

August 2010 - Change of use to use upper floor of garage as an office - Approved

November 1976 - Extensions to dwelling – Approved

## **Consultations**

Bradfield Parish Council - Recommend refusal of this application as the conditions were imposed by planning for a reason.

Sheffield City Council – The City Council has no comment to make on this application from both the planning and highways viewpoint.

## **Representations**

Two strong and detailed objections to the current application have been received by the Authority from two properties that share the access drive from the A57 with Birch Lea. These letters set out very clearly at the time the application was submitted there was a wide range of problems associated with use of the garage for office space including the amount of cars parked on site, on the access track and the A57 itself despite no waiting restrictions on the main road. It is also clear from these letters that at the time the application was submitted the use of the garage as an office was considered by the authors to be particularly harmful to the residential amenities of these properties and a more intensive use compared to that permitted in 2010 was causing a range of highway safety issues.

## **Main Policies**

Relevant Core Strategy policies include: DS1, GSP1, GSP2, GSP3, L1, E2, T1 & T4

Relevant Local Plan policies include: LC4, LE4, LT2 & LT9

As this application has been made under section 73 of the Town and Country Planning Act 1990 the Authority must only consider whether to vary the conditions that are the subject of the application and it is not able to re-consider the planning merits of the original application. In this case, the key issues arising from the proposed variation to the Conditions 4 and 5 attached to Planning Decision Notice NP/S/0110/0072 are whether the extent of the proposed use and the form and scale of the resulting development would result in any adverse effect upon the character of the area and the interests of nearby residents.

It is therefore considered policies DS1 and E2 of the Core Strategy and saved Local Plan policy LE4 are especially relevant because the current application concerns the expansion of an existing business in a location outside of a named settlement. These policies are relatively supportive of employment uses, especially where they are related to the diversification of an existing farming business, but stress employment uses are only permissible where they do not compromise landscape conservation objectives and where they are not unneighbourly. The provisions of E2(D) and LE4(b) set out specific criteria to assess proposals for the expansion of existing businesses in the open countryside.

E2(D) says proposals to accommodate growth and intensification of existing businesses in the open countryside will be considered carefully in terms of their impact on the appearance and character of landscapes. LE4(b) says outside named settlements, expansion of existing industrial and business development will not be permitted unless:

- i. it is of a modest scale in relation to the existing activity and/or buildings, and does not extend the physical limits of the established use;
- ii. it does not harm and wherever possible secures an enhancement to the amenity and valued characteristics of the area and the appearance of the site; and
- iii. new or extended buildings are clearly justified and proper consideration has been given to the possibilities of using appropriate existing buildings to meet the needs of the business.

DS1, E2 and LE4 are also supported by a wider range of design and landscape conservation policies in the Development Plan including policies GSP1, GSP2, GSP3 and L1 of the Core Strategy and saved Local Plan policy LC4, which seek to safeguard the valued characteristics of the National Park by promoting sustainable developments that would be of a high standard of design and sensitive to their landscape setting. GSP3 and LC4 otherwise seek to safeguard the living conditions of residents affected by development proposals and it is notable that representations on this application emphasise the harmful impacts of a more intensive use of the

site on the amenities of the local area.

Traffic management and vehicular movements associated with the existing employment uses at Birch Lea have also been raised in representations. Core Strategy policies T1 and T4 and saved Local Plan policies LT2 and LT9 presume against developments that would result in traffic generation particularly where it would result in the more intensive use of minor roads by heavy goods vehicles and large vehicles transporting goods. LT18 says that safe access is a pre-requisite of all development in the National Park.

It is considered that these policies in the Development Plan are consistent with the more recent national planning policies in the National Planning Policy Framework ('Framework') taking into account the following paragraphs from the Framework which are considered to be of particular relevance to the current application.

Paragraph 14 of the Framework states that at the heart of national planning policy is a presumption in favour of sustainable development, which should be seen as a golden thread running through both plan-making and decision-making.

Paragraph 17 of the Framework states, amongst other things, that a set of 12 core land-use planning principles should underpin both plan-making and decision-taking. Amongst these 12 core principles is that planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs. Planning should also contribute positively to the living conditions of existing communities.

Paragraph 28 of the Framework states, amongst other things, that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development. To promote a strong rural economy, local and neighbourhood plans should, amongst other things, support the sustainable growth and expansion of all types of businesses and enterprise in rural areas, both through the conversion of existing buildings and well-designed new buildings.

Paragraph 34 of the Framework states plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised. However this needs to take account of policies set out elsewhere in this Framework, particularly in rural areas and the Framework requires all development to be provided with a safe and suitable access.

Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in National Parks, along with their wildlife and cultural heritage.

### **Use of Planning Conditions**

When considering an application made under section 73 of the Town and Country Planning Act 1990 the Authority may refuse planning permission, or grant planning permission for the proposed variations, and/or add new conditions beyond those imposed on the original permission provided the new conditions do not materially alter the development that was subject to the original permission and are conditions which could have been imposed on the earlier planning permission.

Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. A decision notice describing the new permission should be issued, setting out all of the conditions related to it. To assist with clarity decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.

Section 70(1)(a) of the Town and Country Planning Act 1990 enables the Authority in granting planning permission to impose “such conditions as they think fit”. This power must be interpreted in light of material factors such as relevant policies in the Development Plan, policies in the National Planning Policy Framework, the recently published Planning Practice Guidance on the use of conditions, and relevant case law.

The Framework says local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of planning conditions but planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects i.e. where the condition meets these ‘six tests’.

Amongst other things, Planning Practice Guidance says whether it is appropriate for the Authority to impose a condition on a grant of planning permission will depend on the specifics of the case. Conditions should help to deliver development plan policy and accord with the requirements of the National Planning Policy Framework, including satisfying the six tests for conditions. The six tests must all be satisfied each time a decision to grant planning permission subject to conditions is made.

This Guidance also says when used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. It is also highly relevant to this application that this Guidance otherwise states that a condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development.

It is also highly relevant to the current application that Planning Practice Guidance says it is rarely appropriate to grant a ‘personal consent’ and that a condition limiting the benefit of the permission to a company is inappropriate because its shares can be transferred to other persons without affecting the legal personality of the company.

### **Assessment**

In this case, it is considered there is sufficient evidence to demonstrate the original proposals to accommodate up to eight staff within the triple garage at Birch Lea would result in an over intensive use of the premises and cause unacceptable harm to the amenities of the neighbouring properties and give rise to highway safety issues. However, it is also considered that the revised application to accommodate five staff on the upper floor for the garage and use the ground floor of the garage for storage space ancillary to the office use would also constitute an over intensive use of the premises.

In the first instance, whereas the submitted block plan suggests that up to nine cars could be parked within the curtilage of Birch Lea, the arrangement shown on the block plan does not properly demonstrate there would be sufficient room to manoeuvre cars adequately, and fails to show how delivery vehicles might access the site and manoeuvre within the curtilage of Birch Lea. Taking into account the host property has four bedrooms, there is limited public transport links to the site, and limited accessibility to the site on a bike because of the volume of traffic on the A57, it is clear the occupants of Birch Lea, employees on site, and visitors to the site would all be dependent on a car or other vehicles and it has not been shown how this demand for parking on site could be met if there were five employees working from the garage.

Moreover, whilst it is acknowledged that the County Highways Authority have chosen not to comment on this application, it is considered that the vehicular access onto the A57 is not an adequately safe and suitable access for a more intensive use of the premises than that originally granted in 2010 .

In particular, the entrance is not especially visible when approaching the property from either direction and Birch Lea itself is not visible from the A57. Therefore, there is a high risk of 'overshooting' the access and difficulties then trying to find a safe place to turn around. There is also a risk of traffic waiting on the A57 to enter the premises as the geometry of the access is not very well-suited to allow vehicles to enter the site when other vehicles are trying to leave. There is also a high risk that a large number of comings and goings along the shared access track from the A57 would detract from the tranquillity and the quiet enjoyment of the other three residential properties adjacent to Birch Lea and cause conflict between different users because of the relatively narrow width of the track.

It is also highly relevant that these properties are located in a relatively quiet backwater of the National Park, set back from the main road in what is otherwise a relatively remote and isolated location on the edge of the National Park. Therefore, noise and disturbance and perceptions of loss of privacy and security would be keenly felt and whilst cars and other vehicles parked at Birch Lea would be screened from public vantage points, as many as nine cars parked on site would have a harmful impact on the character of the local area.

Therefore, also taking into account the potentially harmful impacts arising from the intensification of what is considered to be a less than suitable access from the A57 and less than adequate on site parking provision: it is considered the proposed variation to the Conditions 4 and 5 attached to Planning Decision Notice NP/S/0110/0072 would result in an adverse effect upon the character and amenities of the local area, detract from the living conditions of nearby residents, and would result in unacceptable risks to highway safety. In these respects, the proposed increase in staff to five from three originally permitted and the retention of the ground floor of the garage for storage space ancillary to the office use on the upper floor (as proposed in the revised application) would conflict with the specific provisions of LE4 and E2 relating to the expansion of an existing business in the countryside and the wider range of relevant traffic management and design and conservation policies in the Development Plan and the Framework.

It is also considered the fact that the original permission was only granted as an exception to policy based on the personal circumstances of the applicant adds weight to these conclusions and it is notable that the original permission was granted retrospectively. In these respects, whereas it would be reasonable to say the original permission was an appropriate compromise to resolve a breach of planning controls, this is not the same as accepting Birch Lea would be the right location to expand and develop a business. Equally, it is recognised that this application seeks to regularise a breach of planning controls but the benefits to the business and the personal circumstances of the applicants in this case are not considered to offset or outweigh the identified harm that officers consider would result from the grant of planning permission for either the original submission or the revised application.

Therefore, it would normally be appropriate to recommend refusal of this application, which cannot be considered to be proposing a sustainable form of development, but it is considered that an approval restating the conditions this application seeks to vary, adding conditions and varying other conditions on the original permission would serve a proper planning purpose and is an approach that can be taken when considering an application made under s.73 of the 1990 Act, as set out above.

In this case, taking into account Planning Practice Guidance on the use of planning conditions it would be more appropriate to place an ancillary tie retaining the garage in the same planning unit as the main house rather than retain what amounts to a personal consent for a particular type of business. It is otherwise considered this condition along with a restriction on a maximum of three employees to be accommodated on the premises and retaining a restriction on the use of the upper floor to a B1(a) office use would be necessary in the interests of safeguarding the amenities of the local area and in the interests of highway safety. These conditions would also reflect the intent of the original permission to allow a small scale business to operate from the

premises that would have similar characteristics to home working from home and would be better supported by the Authority's planning policies.

However, it would also be necessary in the interests of highway safety to retain the garage space for the garaging of domestic vehicles and storing bicycles. This condition was not imposed on the original permission but it could and should have been. This condition would ensure sufficient space is retained within the curtilage of Birch Lea for parking and manoeuvring both visitor's vehicles and vehicles used by the people living at Birch Lea also taking into account this is a four bedroomed property. Finally, it would be necessary to restate a condition on the original permission restricting working hours in the interest of safeguarding the character and amenities of the local area also taking into account the applicant has stated these hours are still kept by the business. However, a condition restricting delivery times was not included on the original permission but could have been and should be included on a fresh permission, again, in the interest of safeguarding the character and amenities of the local area.

### **Conclusion**

In conclusion, it is considered that the extent of the proposed use and the form and scale of development resulting from the variations proposed to the Conditions 4 and 5 attached to Planning Decision Notice NP/S/0110/0072 in both the original submission and the revised application would result in a substantial and harmful adverse effect upon the character and amenities of the area and the living conditions of nearby residents and give rise to unacceptable highway safety issues. However, as discussed immediately above, it is also considered issuing a fresh permission for the change of use of the upper floor of the garage at Birch Lea to office use would mean that the proposed conditions would more robustly comply with the more recent Planning Practice Guidance than the previous conditions and the continuing use of the premises under the fresh permission would more robustly comply with the relevant policies in the Development Plan and the Framework.

Accordingly, the current application is recommended for conditional approval.

### **Human Rights**

Any human rights issues have been considered and addressed in the preparation of this report.

### **List of Background Papers (not previously published)**

Nil