



Appeal Decision

Site visit made on 6 September 2010

by Martin Whitehead LLB BSc(Hons)
CEng MICE

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

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Decision date:
24 September 2010

Appeal Ref: APP/C3430/A/10/2129236

Moors Farm, Whitehouse Lane, Codsall, Wolverhampton WV8 1QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr William Moreton against the decision of South Staffordshire Council.
- The application Ref 09/00752/COU, dated 14 October 2009, was approved on 23 December 2009 and planning permission was granted subject to conditions.
- The development permitted is conversion of barns into 3 two bedroom dwellings.
- The condition in dispute is No 3 which states that: *'Notwithstanding what is shown on the approved plan, this permission does not grant or imply consent for the access to the dwellings to the west side of the site as shown in orange on the approved plan, leading to Mill Lane, Codsall'*.
- The reason given for the condition is: *'In order to define the permission and to avoid doubt'*.

Decision

1. I allow the appeal, and vary the planning permission Ref 09/00752/COU for conversion of barns into 3 two bedroom dwellings at Moors Farm, Whitehouse Lane, Codsall, Wolverhampton WV8 1QG granted on 23 December 2009 by South Staffordshire Council, deleting condition 3.

Main issue

2. Whether the condition is reasonable and necessary to define the permission and to avoid doubt.

Reasons

3. The appeal site includes the barns that have been converted, together with an area of land surrounding them. It does not include the access that is mentioned in the condition. The access to Mill Lane is to the south east of the site. Furthermore, the description of the permitted development does not mention an access to the site. Therefore, there is no reason to refer to the access in a condition in order to define the permission.
 4. The appellant has claimed that the track from Mill Lane to Moors Farm has existed as a long standing right of access for more than 100 years. I have not been given any substantive evidence that contests this claim. The condition would not alter this position.
 5. At the site visit I observed that the track appears to be in reasonable condition with a stone running surface and hedges trimmed back on either side. It runs directly to a stone paved parking area adjacent to the barns, via a gated access
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- and a bridge over a stream. The Council has not provided details of any harm that would be caused by the use of the track to access the permitted dwellings.
6. The appellant has referred to a previous planning permission granted in 2001 for a change of use of the appeal buildings into 2 residential units. The main difference between this and the appeal development appears to me to be the division of the permitted 4 bedroom dwelling into 2 two bedroom dwellings. That previous permission was not subject to a condition similar to the appeal condition. The Council Officer's report on the appeal permission regarding access states that the amendment to the development to provide 3 two bedroom dwellings would not result in any material increase in vehicular traffic to the site. Therefore, I have been given no justification for the imposition of the condition.
 7. The owners of Mill Beck, Mill Lane, have objected to the use by Moors Farm of the track to Mill Lane on the grounds that it belongs to them. I understand from Solicitors instructed by them that its use is in dispute and has not been resolved. The appellant has claimed that the track has been used for access to other buildings on Moors Farm. On this basis the condition would not be enforceable, particularly as I have not been given any legal documentation to support the ownership of the track or the claim that the occupiers of Moors Farm do not have a right of access along it.
 8. For the reasons given above, I have found that the condition is not reasonable or necessary to define the permission and to avoid doubt. Therefore, having regard to all matters raised, I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

M J Whitehead

INSPECTOR