



Our ref: DK/17046

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18th July 2019

Dear Bob

Application to vary condition 2 attached to planning permission ref: 16/01563/FUL and appeal ref: APP/C3105/W/17/3173098

Muddle Barn Farm, Colony Road, Sibford Gower, Banbury OX15 5RY

Mr & Mrs G Besterman

As you know, DK Planning & Development Ltd acts on behalf of Mr & Mrs Besterman, the owners of Muddle Barn Farm, providing planning advice alongside Yiangou Architects in connection with the provision of a replacement dwelling at Muddle Barn Farm.

Planning permission was granted on appeal on 31st October 2017 for the 'Demolition of an existing dwelling and a range of large equestrian buildings and the erection of a replacement dwelling including associated works and landscaping' (application ref: 16/01563/FUL and appeal ref: APP/C3105/W/17/3173098). Condition 2 on the decision notice says that the development shall be carried out in accordance with the approved plans and then lists all of the approved drawings/plans.

On 10th July 2018, planning permission was granted for a variation of condition 2 attached to application ref: 16/01563/FUL and appeal ref: APP/C3105/W/17/3173098 to allow for minor material amendments involving alterations to the proposed dwelling (application ref: 18/00616/F).

On 8th August 2018, planning permission was granted for a further variation of condition 2 attached to application ref: 16/01563/FUL and appeal ref: APP/C3105/W/17/3173098 to allow for minor material amendments involving alterations to the proposed dwelling as well as the construction of a replacement outbuilding (application ref: 18/00793/F).

On 8th November 2018, planning permission was granted for the creation of a new driveway and the part removal of the existing driveway (application ref: 18/01167/F).

It is through negotiations with the adjacent owner of New Barn Farm in respect of the provision of land for the siting of the new driveway that further alterations to the approved scheme are now necessary. In addition to the alterations consented under application ref: 18/00793/F, it is now intended to erect a short length of wall between the two properties and remove two bays of existing stable block 2 that the approved plans show is to remain.

It is debatable whether the construction of a 2m high wall in the position proposed and the part demolition of the existing stable block actually requires the submission of a planning application. However, so that the replacement dwelling can be constructed fully in accordance with approved plans, with no discrepancies, it is considered appropriate to seek these further amendments.

As for the previous minor material amendments, these amendments are unlikely to be considered as non-material amendments to the 2017 planning permission but as minor material amendments they can be sanctioned by substituting the approved drawings in condition 2 with new drawings that show the proposed modified scheme.

Section 73 of the Town & Country Planning Act 1990 allows applications to be made to vary a condition on an existing, extant planning permission. One of the uses of a section 73 application is to seek minor material amendments where there is a relevant condition (in this case condition 2) that can be varied.

In line with your planning application advice guidance, we attach the following:-

- Application form
- Planning application fee of £234
- Drawing No. 1759.160F - Proposed Site Plan
- Drawing No. 1759.161C - Proposed Ground Floor Plan
- Drawing No. 1759.162D - Proposed First Floor Plan
- Drawing No. 1759.163B - Proposed Attic Floor Plan
- Drawing No. 1759.164B - Proposed External Elevations Sheet 1 of 2
- Drawing No. 1759.165B - Proposed External Elevations Sheet 1 of 2

The existing condition

As presently drafted, condition 2 on planning permission ref: 16/01563/FUL reads:

"The development hereby permitted shall be carried out in accordance with the following approved plans: 1759.100G, 1759.110B, 1759.111B, 1759.118B, 1759.122A, 1759.127A, 1759.128A, 1353.01C and the site location plan."

The reason for the condition is for the avoidance of doubt and in the interests of proper planning (see paragraph 15 of the Inspector's appeal decision).

The proposed changes

Changes to the dwelling

The proposals remain exactly the same as those approved in July and August last year. The most noticeable change is the slight relocation of the single storey kitchen wing eastwards relative to the principal element of the house. There are some consequential detailed amendments as well as other alterations. The proposed changes comprise:

- The footprint of the principal element of the house is slightly widened and lengthened

- The single storey kitchen wing is slid approximately 3.0m eastwards relative to the principal element of the house
- Two windows added to southern gable of the principal element for the study and first floor bedroom
- Two windows added to northern gable of the principal element for the dining room and first floor bedroom
- One additional dormer window added to the east and west elevations and the dormers rearranged on the roof
- Two conservation roof lights added to the east elevation of kitchen
- Alteration to windows and doors on the single storey kitchen wing

Changes to the outbuildings

Part of the originally approved scheme includes the conversion of an existing range of stables into garaging, a store and bin store to serve the replacement dwelling. This conversion is shown on approved drawings 1759.110B and 1759.122A. As per the amendments approved in August last year it is still intended to demolish this stable range and construct a new linear outbuilding to the south to align more with the position of the replacement dwelling and thereby create a more enclosed forecourt at the rear of the house.

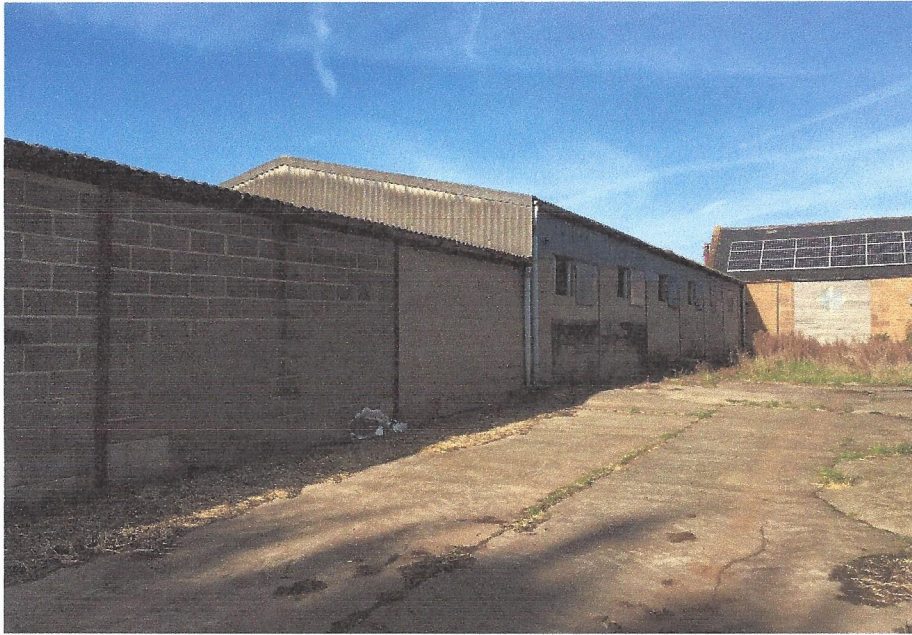
The new outbuilding is to be a combination of single and one-and-a-half storeys, all under a pitched roof. On the ground floor will be garaging, garden store and an office whilst an art studio, materials store and WC is proposed on the partial upper level.

The existing stable block will be replaced with a 0.5m high retaining wall and paving.

Changes to Stable Block 2 and the construction of a wall

A small land swap is proposed with the adjacent owner in return for the use of the land on which to construct the alternative access consented in November 2018. This land swap involves a small area of land to the north west and north east of stable block 2. The photographs over the page show the two areas as well as the front and rear elevations of stable block 2. The land to be provided to the neighbour is immediately adjacent to the neighbour's house and existing boundary.

So as to delineate the future ownership of the area, a 2m high block work wall rendered and topped with a suitable coping, is to be constructed along the new common boundary. The northernmost two bays of Stable block 2 (closest to the neighbour's house) are to be demolished and a new gable end constructed to enclose the fourth bay.



[Land to the north east of Stable Block 2 currently hard surfaced. Stable Block 2 is the taller building on the left-hand side of the photograph with 6 bays. The building in the distance with the PVs on the roof is part of the neighbour's house]



[Land to the north west of Stable Block 2 currently hard surfaced and containing a mobile home. Stable Block 2 is the taller building on the right-hand side of the photograph with 6 bays]

The proposed changes are shown on submitted drawings 1759.160F, 1759.161C, 1759.162D, 1759.163B, 1759.164B and 1759.165B prepared by Yiangou Architects.

Consideration of the proposed changes

The development plan remains the same now as it was in October 2017 when the planning appeal was determined, namely saved general housing policies H17 and H18 from the Cherwell Local Plan adopted in November 1996. For all intents and purposes, the planning context is the same now as it was in October. A replacement local plan is

emerging but it is still not yet at a stage where its policies will override the adopted plan.

Policy H17 of the adopted Local Plan deals with proposals for the one-for-one replacement of an existing statutorily unfit or substandard dwelling provided that:

- (i) The existing building is not a listed building capable of restoration or suitable for an appropriate alternative and beneficial use;
- (ii) In cases where the existing building lies outside the limits of an existing settlement; the use of the buildings as a dwelling has not been abandoned or extinguished and its proposed replacement is similar in scale and within the same curtilage.
- (iii) The proposal meets the requirements of the other policies in the Plan.

Paragraph 2.75 of the adopted Local Plan provides further explanation of the term 'similar in scale' saying that the protection of the character of the countryside will be a primary objective in all cases, and proposals for substantially larger and more conspicuous dwellings in the landscape will be resisted.

Referred to by the Inspector, Policy H18 deals with new dwellings in the countryside noting that they will be permitted when:

- (i) It is essential for agriculture or other existing undertakings;
- (ii) The proposal meets the criteria set out in Policy H6; and
- (iii) The proposal would not conflict with other policies in this Plan.

Most of the changes have already been agreed by virtue of the permissions granted in July and August 2018 (applications 18/00616/F and 18/00793/F). The difference between this application and the one granted in August 2018 is the provision of the wall and the loss of two bays off the northern end of stable block 2. We'll concentrate on those differences rather than look again at the merits of the house and outbuilding alterations.

The approved scheme shows the northern part of stable block 2 remaining in its entirety along with the hardstanding either side of it. The proposed changes will see a smaller stable block retained along with hardstanding to its north west. A new wall will form the boundary with the neighbouring property.

The alterations will make very little difference, if any, to the overall replacement dwelling, its setting and range/extent of outbuildings. The greatest difference is to the neighbour who gains some outside space around the western part of their house. Moreover, the removal of the two bays of stable block 2 will reduce the sense of enclosure felt by the neighbour in this location.

It is our opinion that the proposed minor material amendments to the house, outbuildings and boundary wall will have no greater impact on any material planning considerations than the approved scheme, such that the proposed scheme is not substantially different to the approved dwelling. As a result, the alterations can be appropriately sanctioned via the Section 73 process.

Suggested variation of condition 2

Condition 2 should be varied to refer to the new plans that show the latest proposals and incorporate the changes discussed above. Some of the original approved plans are not to be updated and so can remain unaltered.

We suggest condition 2 is reworded to read as follows:

"The development hereby permitted shall be carried out in accordance with the following approved plans: 1759.160F, 1759.161C, 1759.162D, 1759.163B, 1759.164B, 1759.165B, 1759.127A, 1759.128A, 1353.01C (insofar as it established the extent of the domestic garden) and the site location plan."

The reason for the condition can remain the same.

We can see no obvious need for the deletion or variation of any of the remaining conditions on planning permission ref: 16/01563/FUL as a consequence of the planned amendments to the scheme proposals, the proposed alterations to the wording of condition 2 and the new condition as set out above.

Implications for CIL

There is no CIL liability in respect of the extant consent. The approval of a S73 application to vary or remove conditions can trigger a liability to pay CIL because it results in a new planning permission. However, the Council's emerging CIL Charging Schedule is not yet adopted and as a consequence, CIL is not yet charged within the district. In any event, the proposals seek to remove floor space rather than add to it.

if you require anything further from us, please ring or e-mail David Keyte directly. Otherwise we look forward to a favourable outcome in due course.

Yours sincerely



PK **DK Planning & Development Ltd**

cc Mr & Mrs G Besterman
Neil Quinn - Yiangou Architects