

Supporting Statement

Section 73 Application to Remove  
Condition 2 and 3 of Planning Permission  
P142677/FH  
The Wylde House, Ledbury, HR8 2JE

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## Introduction

1. The building subject of this application is a workshop/summer house that is linked to the northwest elevation of The Wylde House. Planning Permission was granted under application reference P142677/FH for 'Proposed conversion of existing workshop/summer house to residential annex accommodation. Creation of an en-suite bathroom to existing bedroom. The application was approved, and a decision was issued on 30<sup>th</sup> October 2014. The permission was implemented and remains extant.

2. Condition 2 of the planning permission states;

*The development hereby approved shall be carried out strictly in accordance with the approved plans (Drawings reference D1, D5, D6 and D8, and Design and Access Statement, received 2nd September 2014) and the schedule of materials Indicated thereon.*

3. Condition 3 of the planning permission states;

*The ancillary accommodation and the dwelling known as Wylde House, Ledbury, Herefordshire, HR8 2JE shall not be sold, leased or let separately from each other.*

4. The reason provided for imposing the condition is;

*Reason: It would be contrary to the policy of the local planning authority to grant permission for a separate dwelling in this location having regard to acceptable levels of residential amenity and privacy and Policy DRI, DR2 and H18 of Herefordshire Unitary Development Plan and the National Planning Policy Framework*

## Main Issues

### The Six Tests

5. Paragraph 203 of the National Planning Policy Framework states "Local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions". Paragraph 206 of the National Planning Policy Framework states "Planning conditions should only be imposed where they are:

1. necessary;

2. relevant to planning and;
3. to the development to be permitted;
4. enforceable;
5. precise and;
6. reasonable in all other respects.”

6. Paragraph 005 (Reference ID: 21a-005-20140306) of Planning Practice Guidance states that

*‘Any proposed condition that fails to meet any of the 6 tests should not be used.’*

7. This application seeks the removal of condition 3 because the condition fails to meet the six tests for the following reasons.

### Wording of the Condition

8. The wording of the condition and the reason for imposing it are flawed. The reason implies that the intention of the condition is to prevent the use of the building as a separate dwelling. However, the condition only prevents the annexe to be sold leased or let separately from each other. The condition does not restrict the occupation of the barn as a separate dwelling. The barn could be occupied as an independent dwelling without breaching the condition. For example, by an extended family member and their family or a friend and their family. The building could be occupied independently by separate, independent householders without the condition being breached.
9. The condition does not achieve its intended purpose which is to prevent the use of the building of the building as a separate dwelling and fails the tests of necessity and precision. If it is the intention of the condition to restrict the occupation of the building as an independent dwellinghouse then the condition should state that the building may not be used or occupied as an independent dwelling which it does not.

### Residential Amenity

10. The reason for the condition *‘It would be contrary to the policy of the local planning authority to grant permission for a separate dwelling in this location having regard to acceptable levels of residential amenity and privacy and Policy DRI, DR2 and H18 of Herefordshire Unitary Development Plan and the National Planning Policy Framework’*

11. It is unclear why the use of the building would result in unacceptable levels of residential amenity and privacy. The submitted plan shows that the annexe building, and the main dwelling would be afforded ample private amenity space. There would be no unacceptable overlooking impact from the main house to any windows or private amenity space associated with the annexe.
12. This application seeks to vary condition 2 of the planning permission to vary the plan numbers. The amendment proposed is the introduction of a fixed obscure window in place of a standard window as previously approved. This change is detailed on the submitted plans. With the proposed fixed and obscure glazing, there would be no outlook from the annexe towards the main house or its private amenity space. The internal arrangements would be no different to those of a semi-detached property. Each dwelling would have its own independent access and there is no opportunity for any internal access between the two properties. The arrangements detailed on the submitted plan demonstrate that there would be no detrimental impact on the residential amenity of occupants of either property if the annexe were to be occupied as an independent dwellinghouse. Therefore, the condition is not necessary as it does not make an otherwise unacceptable development acceptable.

### Enforcement

13. The condition seeks to prevent the separation of the barn and dwellinghouse by sale, lease or let. However, if such a sale occurred and the condition was breached it is unclear how the condition could be enforced. Neither a breach of condition notice nor an enforcement notice could reverse the sale and separation of the annexe and dwellinghouse after the event.
14. Paragraph: 004 Reference ID: 21a-004-20140306 of planning practice guidance provides a table setting out the six tests alongside key considerations. The key considerations in respect of enforcement are identified as follows;

*Would it be practicably possible to enforce the condition?*

- *Unenforceable conditions include those for which it would, in practice, be impossible to detect a contravention or remedy any breach of the condition, or those concerned with matters over which the applicant has no control.*

15. It would not be practicably possible to enforce the condition. It would not be possible to remedy a breach of the condition because enforcement action could not reverse a sale. As such the condition fails the test of enforceability.

## Policy Context

16. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions are taken in accordance with the development plan unless material considerations indicate otherwise. For this application, The Development Plan comprises and The Herefordshire Local Plan Core Strategy, the Ledbury Neighbourhood Plan and the National Planning Policy Framework and The National Planning Policy Guidance are material considerations that carry substantial weight.

## National Planning Policy Framework

17. National policy is set out in the National Planning Policy Framework, supported by the National Planning Practice Guidance. The revised National Planning Policy Framework was published on 24<sup>th</sup> July 2018. The revised Framework at paragraph 2 repeats that applications for planning permission are required to be determined in accordance with the development plan and reinforces that the Framework is a material consideration in planning decisions.

*‘Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The National Planning Policy Framework must be taken into account in preparing the development plan, and is a material consideration in planning decisions...’*

18. The Framework sets out that plans and decisions should apply a presumption in favour of sustainable development which is explained at paragraph 11;

*For decision-taking this means:*

*c) approving development proposals that accord with an up-to-date development plan without delay;*  
*or*

*d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*

*i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*

*ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole*

19. The Framework at paragraph 8 states;

*'Achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):*

*a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;*

*b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering a well-designed and safe built environment, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and*

*c) an environmental objective – to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land, helping to improve biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.*

20. The revised Framework at paragraph 59 reinforces that the Government's objective is to boost significantly housing supply.

### Herefordshire Local Plan Core Strategy

21. The Herefordshire Local Plan Core Strategy was adopted on 16th October 2015. It represents the vision for the County to 2031 and provides the context for future work on the preparation of the Hereford Area Plan, the Minerals and Waste Local Plan and the Travellers' Sites Development Plan Document. At present it is the only adopted Policy document of the Local Plan.

22. Policy SS1 of the Local Plan, echoes the presumption in favour of sustainable development as set out in the Framework and states;

*Planning applications that accord with the policies in this Core Strategy (and, where relevant with policies in other Development Plan Documents and Neighbourhood Development Plans) will be approved, unless material considerations indicate otherwise.*

23. Policy SS2 - Delivering new homes, highlights that Ledbury is one of the towns that will be a main focus for new housing development accommodating a share of a minimum of 4,700 new homes over the plan period. Policy LD1 states that Ledbury will accommodate a minimum of 800 new homes highlighting that infill housing development will be considered appropriate.

24. The application site is located within the settlement boundary of Ledbury where there is easy access to a range of shops, services and amenities as well as various public transport modes. The site is sustainable in terms of its location and the future occupants of the dwelling would not be reliant on the use of a private car. In this regard the proposal accords with Policies SS2, LD1 and SS4 of the Local Plan. The principle of residential development in this location is not contrary to any development plan policy.

25. Turning to the detailed aspects of the proposal, as highlighted in the officer's report concerning the original application, the design and proposed building works are appropriate. The report states;

*The principle of the conversion and use is acceptable having regard to policies HI8 and HBA1, the location, building itself and there being no resultant impact on third parties. The conversion maintains the pleasant character of the building, in turn respecting the setting of Wylde House, a listed building.*

26. The LPA were content with the physical works to convert the building and permission was granted and the removal of condition would not result in any physical alterations to the building.

27. Policy SD1 deals with 'Sustainable design and energy efficiency'. The policy requires all development to safeguard residential amenity for existing and proposed residents. The reason for imposing the condition was solely concerned with whether acceptable levels of residential amenity and privacy may be achieved if the annexe were to be occupied as an independent dwelling.

28. As demonstrated on the submitted plan, both the main dwelling and the annexe would be provided with private amenity space. The land to the north of the annexe building forms a substantial private garden that is separate from the main house. Similarly, the land to the west of the main house forms a substantial private garden that is naturally separated from the annexe.

29. The windows in the southern elevation would be obscured and fixed. This could be controlled by condition of the new planning permission granted. There would be no overlooking to the private

amenity space of the main dwelling ensuring that occupants of both dwellings would benefit from acceptable levels of private amenity in accordance with Policy SD1 of the Local Plan. The reason for imposing condition 3 is therefore not justified and the condition is not necessary.

30. The key considerations in respect of necessity as set out in the table at Paragraph: 004 Reference ID: 21a-004-20140306 of planning practice guidance are as follows;

*‘Will it be appropriate to refuse planning permission without the requirements imposed by the condition?’*

- A condition must not be imposed unless there is a definite planning reason for it, ie it is needed to make the development acceptable in planning terms.*
- If a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity. ‘*

31. The imposition of condition 3 fails the test of necessity as there is a no definite planning reason for it. The separation of the barn and the dwellinghouse by sale, let or lease would not conflict with any development plan policy. Therefore, the condition is not necessary to make the development acceptable in planning terms.

### Ledbury Neighbourhood Plan

32. The Ledbury Neighbourhood Development Plan was made on 11 January 2019. It now forms part of the Development Plan for Herefordshire. The NDP sets the planning scene for Ledbury for the next ten years or so. Ledbury is a vibrant town: the NDP’s main thrust is to ensure that it continues to prosper.

33. Objective HO1 of the Ledbury NP identifies that windfall sites within the settlement boundary are an acceptable for of development that will contribute to meeting the needs of the town in terms of housing provision over the plan period. The removal of condition 3 would not conflict with the NP in this regard. The proposal does not conflict with any other policy contained within the Ledbury NP.

### Conclusion

34. The reason for the condition implies that its intention is to prevent the use of the building as a separate dwelling. However, the condition only prevents the separation of the house and barn by sale, lease or let. The condition does not restrict the occupation of the barn as a separate dwelling and in this regard



is ineffective. The barn could be occupied by independent households as an independent dwelling without breaching the condition. The condition does not achieve its intended purpose and fails the tests of necessity and precision.

35. The reason for the condition states;

*‘It would be contrary to the policy of the local planning authority to grant permission for a separate dwelling in this location having regard to acceptable levels of residential amenity and privacy and Policy DRI, DR2 and H18 of Herefordshire Unitary Development Plan and the National Planning Policy Framework’*

36. With the proposed fixed and obscure glazing, there would be no outlook from the annexe towards the main house or its private amenity space. The internal arrangements would be no different to those of a semi-detached property. Each dwelling would have its own independent access and there is no opportunity for any internal access between the two properties. The arrangements detailed on the submitted plan demonstrate that there would be no detrimental impact on the residential amenity of occupants of either property if the annexe were to be occupied as an independent dwellinghouse. Therefore, the condition is not necessary as it does not make an otherwise unacceptable development acceptable.

37. It would not be practicably possible to enforce the condition. It would not be possible to remedy a breach of the condition because enforcement action could not reverse a sale. As such the condition fails the test of enforceability.

38. Planning Practice Guidance Paragraph 005 (Reference ID: 21a-005-20140306) states;

*‘Any proposed condition that fails to meet any of the 6 tests should not be used.’*

39. The application site is located within the settlement boundary of Ledbury where there is easy access to a range of shops, services and amenities as well as various public transport modes. The site is sustainable in terms of its location and the future occupants of the dwelling would not be reliant on the use of a private car. In this regard the proposal accords with Policies SS2, LD1 and SS4 of the Local Plan. The principle of residential development in this location is not contrary to any development plan policy.

40. For the reasons outlined in this statement the condition is not necessary, enforceable nor precise and is not reasonable in all other respects. The condition should therefore be removed.