

Date of Meeting	2 July 2014
Application Number	14/03109/VAR
Site Address	Land South Of Former Garage Site, Frome Road, Bradford On Avon, Wiltshire
Proposal	Variation of condition 2 of planning permission 13/03868/FUL to allow amendment to front and side elevations of terrace and deletion of conditions 3, 4, 5, 8, 10, 11 and 12 of planning permission 13/03868/FUL
Applicant	Ashford Homes (SW) Ltd
Town/Parish Council	BRADFORD ON AVON
Ward	BRADFORD-ON-AVON SOUTH
Grid Ref	382536 160614
Type of application	Full Planning
Case Officer	James Taylor

Reason for the application being considered by Committee

The application has been called-in by Councillor Ian Thorn. The reasons for the call-in have been stated to be:

“The application to vary conditions is in reality a proposal for change of use to eliminate the live-work element and amend the scheme to 100% residential.

This is contrary to policy and should be refused. It can be argued that a change of use in this context should be in the form of a new application. A significant change of use should not be hidden behind a proposal for a variation of condition.

The original proposal for live-work units in the approved scheme was a proposal by the site owners and represented a major concession to employment policy. Removal of all employment use as now proposed is contrary to the NPPF, the former District Plan Policy E5 and the emerging Wiltshire Core Strategy.”

1. Purpose of Report

The purpose of this report is to explain and demonstrate why this application is being recommended for permission subject to conditions.

2. Report Summary

This is a report to demonstrate why planning permission should be granted for the removal and/or variation of planning conditions to allow subtle alterations to elevation treatments and

the unrestricted occupation of 5 x C3 (Use Class) dwellinghouses without conditions requiring details of landscaping, surface water drainage, external materials and contaminated land remediation.

3. Site Description

This application site is located within a designated Conservation Area, on the southern limits of the designated commercial area of the Town Centre and within the town policy limits.

To the north of the application site is the wider development area that has 19 completed homes and 5 commercial units. To the east is the Frome Road with period terraced properties opposite. To the south / south west is the recreation ground with Barton Farm beyond.

4. Planning History

05/00723/FUL – Demolition of existing garage buildings and the proposals construction of mixed use development scheme comprising 1,430sqm of office space and 23 residential dwellings. - Permitted on 15 April 2005

05/00725/CON – Demolition of all existing garage buildings and adjoining properties – Consent on 15 April 2005

07/00955/FUL – Application for change of house type in respect of unit 2 of development – Permitted on 13 March 2007

13/03868/FUL – Erection of 5 live-work units – Permitted on 30 October 2013

5. The Proposal

This is an application to vary condition 2 and delete conditions 3, 4, 5, 8, 10, 11 and 12 of the consented scheme for the erection of 5 live work units (ref: 13/03868/FUL) so that they are conventional standard C3 dwellinghouses. The applicant schedules the following revisions:

- The middle three units of the terrace are projected forward and are faced in ashlar (east elevation)
- Revised dormer detail
- Revised fenestration
- Deletion of string course and addition of quoin details
- Revised porch heads and front door
- Revised fenestration and addition of ashlar panel to south elevation
- Designation of basement level room as 'home office'.

Condition 2 of approve application 13/03868/FUL stated that:

"The development hereby permitted shall be carried out in accordance with the following approved plans:

Drawing: 978/4/000, 978/4/000.A, 978/4/001, 978/4/002, 978/4/003, 978/4/004, 978/4/004.A, and 978/4/005.

REASON: For the avoidance of doubt and in the interests of proper planning."

Condition 3 stated that:

"The business floor space of the live/work unit shall be finished ready for occupation before the residential floor space is occupied and the residential use shall not precede commencement of the business use.

REASON: To ensure that the employment element of the scheme is realised.

POLICY: West Wiltshire District Plan 1st Alteration (2004) E5."

Condition 4 stated that:

"The business floor space of the live/work unit shall not be used for any purpose other than for purposes within Class [B1] in the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

REASON: To ensure that the employment element is compatible with the residential use of the building.

POLICY: West Wiltshire District Plan 1st Alteration (2004) E5."

Condition 5 stated that:

"The residential floor space of the live/work unit shall not be occupied other than by a person solely or mainly employed, or last employed in the business occupying the business floor space of that unit, a widow or widower of such a person, or any resident dependants.

REASON: To define the terms of this permission.

POLICY: West Wiltshire District Plan 1st Alteration (2004) E5."

Condition 8 stated that:

"No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. This shall include indications of all existing trees and hedgerows on the land, and details of any to be retained.

REASON: To provide a satisfactory landscape setting for the development.

POLICY: West Wiltshire District Plan 1st Alteration (2004) C32."

Condition 10 stated that:

"No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details, has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

POLICY: West Wiltshire District Plan 1st Alteration (2004) U2."

Condition 11 stated that:

"No development shall commence on site until details and samples of the materials to be used for the external walls and roofs have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

POLICY: West Wiltshire District Plan 1st Alteration (2004) C17, C18, C31a, H1."

Condition 12 stated that:

"No development shall commence on site (other than that required to be carried out as part of a scheme of remediation approved by the Local Planning Authority under this condition), until steps (i) to (iii) below have been fully complied with. If unexpected contamination is found after development has begun, development must be halted on that part of the site affected by the

unexpected contamination to the extent specified by the Local Planning Authority in writing until step (iv) has been complied with in full in relation to that contamination.

Step (i) Site Characterisation:

An investigation and risk assessment must be completed to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings submitted to and approved in writing by the Local Planning Authority. The report of the findings must include:

- *A survey of the extent, nature and scale of contamination on site;*
- *The collection and interpretation of relevant information to form a conceptual model of the site, and a preliminary risk assessment of all the likely pollutant linkages;*
- *If the preliminary risk assessment identifies any potentially significant pollutant linkages a ground investigation shall be carried out, to provide further information on the location, type and concentration of contaminants in the soil and groundwater and other characteristics that can influence the behaviour of the contaminants;*
- *An assessment of the potential risks to*
 - o human health,*
 - o property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,*
 - o adjoining land,*
 - o groundwater and surface waters,*
 - o ecological systems,*
 - o archaeological sites and ancient monuments;*

This must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

Step (ii) Submission of Remediation Scheme:

If any unacceptable risks are identified as a result of the investigation and assessment referred to in step (i) above, a detailed remediation scheme to bring the site to a condition suitable for the intended use must be prepared. This should detail the works required to remove any unacceptable risks to human health, buildings and other property and the natural and historical environment, should be submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, a timetable of works and site management procedures.

Step (iii) Implementation of Approved Remediation Scheme:

The approved remediation scheme under step (ii) must be carried out in accordance with its requirements. The Local Planning Authority must be given at least two weeks written notification of commencement of the remediation scheme works.

Step (iv) Reporting of Unexpected Contamination:

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it should be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment should be undertaken in accordance with the requirements of step (i) above and where remediation is necessary, a

remediation scheme should be prepared in accordance with the requirements of step (ii) and submitted to and approved in writing by the Local Planning Authority.

Step (v) Verification of remedial works:

Following completion of measures identified in the approved remediation scheme a verification report (referred to in PPS23 as a validation report) must be produced. The report should demonstrate the effectiveness of the remedial works.

A statement should also be provided by the developer which is signed by a person who is competent to confirm that the works detailed in the approved scheme have been carried out (The Local Planning Authority can provide a draft Remediation Certificate when the details of the remediation scheme have been approved at stage (ii) above).

The verification report and signed statement should be submitted to and approved in writing of the Local Planning Authority.

Step (vi) Long Term Monitoring and Maintenance:

If a monitoring and maintenance scheme is required as part of the approved remediation scheme, reports must be prepared and submitted to the Local Planning Authority for approval at the relevant stages in the development process as approved by the Local Planning Authority in the scheme approved pursuant to step (ii) above, until all the remediation objectives in that scheme have been achieved.

All works must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Land Contamination, CLR 11" and other authoritative guidance.

REASON: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

POLICY: West Wiltshire District Plan 1st Alteration (2004) C37."

The live-work units were approved in lieu of the extant approval for 1,085 sqm. of office space and 4 flats granted planning permission as part of a wider implemented scheme reference 05/00723/FUL. The rest of the wider development has been completed and totals 19 occupied homes and 5 ground level commercial units (approximately 345 sqm.). The developer submitted the live-work application on the basis that the office accommodation was not viable as a speculative venture and marketing generated no interest from an end occupier.

This latest application is made following the sale of the site and on the basis that the 'live-work' units are subject to a different mortgage market, and would have a reduced saleability and result in protracted legal enquiries.

The 5 dwellings now proposed would have living accommodation on the 1st and 2nd floors of the terraced building accessed directly from Frome Road. Below this, at basement level, a home office is proposed (which can be considered an additional reception room) and another room. On 4 of the units this is garaging, on a fifth unit this is not possible and so there would be a further additional room. Each unit would have 2 outside parking spaces – so there would be a total of 10 parking spaces and 4 garages.

6. Planning Policy

West Wiltshire District Plan - 1st Alteration 2004 Policies C17 - Conservation Areas; C18 - New Development in Conservation Areas; C23 - Street Scene; C30 – Skylines; C31a – Design; C32 – Landscaping; C37 - Contaminated Land; C38 – Nuisance; C40 - Trees Planting H1 - Further Housing Development Within Towns; H24 - New House Design; E4 - Premises Outside Employment Policy Areas; E5 - Loss of Employment Floorspace; T10 - Car Parking SP5 - Secondary Retail Frontages; S1 – Education; U1a - Foul Water Disposal; U2 - Surface Water Disposal; I1 – Implementation; I2 - The Arts; I3 - Access for Everyone

West Wiltshire Leisure and Recreation Development Plan Document 2009 (DPD)

Draft Wiltshire Core Strategy (dWCS) - CP1: Settlement Strategy; CP2: Delivery Strategy; CP3: Infrastructure Requirements; CP7: Bradford on Avon Community Area; CP43: Providing Affordable Homes; CP45: Meeting Wiltshire's Housing Needs; CP50: Biodiversity and Geodiversity; CP57: Ensuring High Quality Design and Place Shaping; CP58: Ensuring the Conservation of the Historic Environment

National Planning Policy Framework (2012) (NPPF) and Planning Practice Guidance (PPG)

7. Consultations

Bradford on Avon Town Council: Objects. This application to vary conditions is in reality a proposal for change of use to eliminate the live-work element and amend the scheme to 100% residential. This is contrary to policy and should be refused. It can be argued that a change in use context should be in the form of a new application. A significant change of use proposal should not be hidden behind a proposal for a variation in condition. When the previous application was considered by the Town Council and others in the town were not supported by Wiltshire Council. One of the main objections at the time was the excessive height of the proposal and the use of semi-basements and light wells which are alien to the character of the conservation area.

The inclusion of live-work units in the approved scheme was a proposal by the site owners and represented a major concession to employment policy. Removal of all employment use as now proposed is contrary to the NPPF, the former District Plan Policy E5 and the emerging Wiltshire Core Strategy.

If the applicants are seeking to modify the approved scheme they should be required to re-design the development to reduce the overall height and remove the sub-basement element of the scheme, which is especially alien to the character of the Conservation Area.

Wiltshire Council's Economic Development Officer: This site is a former employment site and much of it is already in residential use. It would be preferable to see as much employment use as possible on this site and for these conditions to remain in force. In an ideal world it would be nice to retain as much employment use on this site that was once entirely employment. However, much of the site is residential and there are not strong enough grounds to refuse and defending any appeal would be difficult as some of the employment units in the other part of the development still remain empty.

Wiltshire Council's Archaeologist: No objection.

Wiltshire Council's Drainage Officer: No objection.

Wiltshire Council's Highways: No objection.

Wiltshire Council's Open Space Officer: No objection.

8. Publicity

This application has been advertised by individual neighbour notification letters, a site notice, an advert in the Wiltshire Times and on the Council's website. 2 objections (including a representation from the Bradford on Avon Preservation Trust) have been received which may be summarised as follows:

- * Loss of employment space;
- * The original reasons for imposing these conditions still stand; to support and encourage commercial and business development in the town.
- * These purposes are supported by District Plan E5 and the emerging Wiltshire Core Strategy and even the NPPF.
- * If no live/work units are to be produced then the whole of this element of the original scheme should be redesigned. The present design is far too high with unacceptable sub-basements.
- * The new buildings should be seriously reduced in height to lessen the detrimental impact on the terrace on the opposite side of the road.
- * This is like the mixed use at Kingston Mills – it is being eroded.
- * Landscaping seems inadequate too.

9. Planning Considerations

9.1 Introduction.

This is a variation submission of an extant planning approval. The applicant seeks to vary condition 2 to allow a variation to elevation treatments, and to delete conditions 3, 4 and 5 to remove the live-work restrictions; to remove condition 8 regarding landscaping; to remove condition 10 regarding surface water disposal; to remove condition 11 regarding submission of samples; and to remove condition 12 regarding land contamination.

9.1.1 Under application 13/03868/FUL, full planning permission was granted for the provision of 5 live work units in lieu of 1,085 sqm of office space and 4 flats granted as part of a wider implemented scheme under reference 05/00723/FUL. The rest of the wider development has been completed and totals 19 occupied homes and 5 ground level commercial units (amounting to about 345 sqm.).

9.2 Principle of Development.

The principle of housing per se in this location is established under Policy H1 of the local plan.

9.2.1 The principle of a building of this type and form has been established with the planning history. In terms of the revised design the building clearly would continue the design approach that has occurred already. Moreover the footprint, scale and massing is also well established. It is assessed that over the extant schemes, no harm would occur in terms of design; heritage implications; highway safety or neighbour amenity.

9.2.2 The proposed use of the premises is recognised as being a more contentious point. The 2007 scheme was approved on the basis of a mixed use development that included approximately 1430 sqm. of employment floor space. This was to compensate for the loss of employment floor space that the site previously provided. Whilst approximately 25% of that

employment offer has been developed in phases 1-3 of the 2007 approved scheme, over 80% of the residential element has been built out. The outstanding Phase 4's mix and offer was fundamentally changed when approval for live-work units was approved last autumn. Instead of discrete employment and flats, the proposal was altered to be a live/work arrangement where the overall floor space given over to the 'work' element appeared rather ancillary to the 'live' and all too easily convertible to be incorporated into the living area subject to the occupiers whim. As such it was assessed that it would be very difficult to control, monitor and enforce, but notwithstanding such difficulty, the Planning Inspectorate's suggested model conditions indicates that the principle of this is something that could be controlled by condition.

9.2.3 The developer submitted a marketing report which demonstrated reasonable but unsuccessful efforts to market the office accommodation. Without an end-user the development would be speculative and there are associated problems of financing in such circumstances. The Council in approving the live-work scheme accepted the loss of a discrete employment offer.

9.2.4 It was considered that the partial occupation of the completed commercial units was an indicator that the market conditions are not favourable. In the current economic conditions this is to be expected. At the time there were some indications of a growing recovery, however the pace and stability of this, according to most commentators was questionable. Government Guidance contained within paragraph 22 details that "*planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of the site being used for that purpose*". Within the development management context it is considered that this has some relevance. Paragraph 22 goes on to detail that alternative uses should be considered on their merits having regard to market signals and the need for different uses to support sustainable communities. This was considered in allowing the live-work units and it was noted that there was a need for further housing within the town and as such, the live-work proposal struck a balance between retaining a 'work' element and providing more housing.

9.2.5 It was noted that the economic development officer and spatial plans officers raised no objections to the original planning permission.

9.2.6 Those considerations are still considered relevant to this application which will wipe out any formal work element to the scheme. More recently, elsewhere within the Town and further along Frome Road, the Western Area Planning Committee granted a scheme which resulted in the loss of approved office accommodation to allow an entire residential scheme to be implemented. The marketing information to that scheme painted a contemporaneous picture of the current market trends for Bradford on Avon – indicating that a loss of employment space was not objectionable.

9.2.7 Whilst it would be regrettable if the employment offer at this particular phase of the development would be deleted, officers assert that given the above commentary, there are no substantive planning reasons to refuse permission. If approved and implemented, the overall former employment site would be developed largely for residential purposes with 345 sqm of employment floor space – which constitutes as being about 25% of what was originally approved. However the shift from live-work units to unrestricted C3 dwellinghouse uses poses less concern than the original application to shift from a mixed use scheme to live-work units. The degree of employment lost was arguably most significant with the move from a discrete employment use and flats to the approved live-work units. This latest erosion would be final and whilst regrettable would not cause significant demonstrable harm. Indeed the current

employment use offered by the 2013 approval would potentially remain, albeit informally and without planning control – or create enforcement difficulties. It is noted that whilst the economic development team find the proposals to be regrettable they do not object and highlight the difficulty of defending an appeal.

9.2.8 The proposals have been designed so that, depending entirely on future occupiers' desire, a convenient home working option would be available. It is assessed that on balance, the shift away from live-work units with the deletion of condition 3, 4, and 5 would not cause any significant demonstrable harm.

9.3 Planning Obligations.

It has been recently assessed that the 5 live-work units did not warrant additional planning contributions over the 2007 approved scheme for offices and 4 flats. The lawful planning use class of live-work units is a C3 dwellinghouse – albeit restricted. As such it is not considered reasonable or necessary to seek planning obligations under this current application to vary the 2013 consent.

9.4 Landscaping

The 2013 approval sought details of landscaping for the site by condition. All necessary information has been included within this variation application and indicates a suitable hard and soft landscaping for the site to match phases 1-3. This condition may therefore be deleted, whilst its implementation condition shall remain.

9.5 Surface Water Disposal

The 2013 approval sought details of surface water disposal for the site by condition as none was provided. It has now been stated that surface water strategy for this site would be carried out in accordance with the scheme approved by condition on the original 2009 scheme. This poses no concern and as such the condition may be varied so that surface water drainage works must be carried out in accordance with those details approved under the extant 05/00723/FUL.

9.6 External Materials

The 2013 approval sought details of external materials for the site by condition. The plans have been annotated to detail natural bath stone (rubble and ashlar) to the walls and natural slate to the roofs. This would accord with the completed / built out Phases numbered 1-3 of the wider development and would be suitable within a designated Conservation Area. The 2013 imposed condition therefore can be deleted.

9.7 Contaminated Land

It was considered in 2013 that contaminated land formed an issue with the previous application. Officers note that the information submitted with the 2013 submission was dated from June 2006 and was not considered contemporaneous. The Environmental health team identified a condition as appropriate. The 2013 approval sought details of contaminated land for the site by condition.

9.7.1 The information submitted is not sufficient to alter the imposition of this condition. However in light of this further checks have been carried out. Looking at the planning history file for 2007 it is noted that the contamination remediation and validation was approved by the Council's contaminated land officer and this was confirmed in a letter dated 6 January 2009 from the principle planning officer of the Council. It is therefore considered that the condition is no longer necessary and may be deleted.

10. Conclusion

It is regrettable that there has been an erosion in the employment offer at this particular phase of the development to the point where this is simply a residential proposal for 5 units. However the shift from live-work units to unrestricted C3 dwellinghouse uses poses less concern than the original application to shift from a mixed use scheme to live-work units. The degree of employment lost was most significant with the move from a discrete employment use with flats to the live-work units. This latest erosion would be final and whilst regrettable would not cause demonstrable harm. Indeed the current employment use offered by the 2013 approval would potentially remain, albeit informally and without planning control – or indeed problems of enforcement.

The other changes pose no planning concerns as the scheme remains suitable to its context and planning constraints.

RECOMMENDATION: Permission subject to conditions.

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans:

978/4/000, 978/4/002.A, 978/4/003.A, 978/4/004B received on 18 March 2014
978/4/001.B, 978/4/007, 978/4/800 received on 25 April 2014.

REASON: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995, as amended, there shall be no extensions or external alterations, including alterations to the doors and windows, and no further buildings erected on the site, or any development normally permitted under Schedule 2, Part 1, Classes A-E (inclusive) of the Order shall be carried out without the express planning permission of the Local Planning Authority.

REASON: The implementation of permitted development rights on this site would be unacceptable, to ensure that the design of the buildings are not compromised by subsequent unsympathetic alterations.

4. No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

5. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

6. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved details.

REASON: To ensure that the development can be adequately drained.

PLANNING INFORMATIVE TO APPLICANT:

The consent hereby granted shall not be construed as authority to carry out works on the highway. The applicant is advised that a license may be required from Wiltshire's Highway Authority before any works are carried out on any footway, footpath, carriageway, verge or other land forming part of the highway.