

Appeal Decision

Site visit made on 9 August 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 20 September 2016

Appeal Ref: APP/M0933/W/15/3095189

The Old Stables, Stainton Court, Stainton, Kendal, Cumbria LA8 0LQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
 - The appeal is made by Mr and Mrs DH Coates against the decision of South Lakeland District Council.
 - It was confirmed that the application Ref: CU/2015/0005, dated 16 February 2015, did not require approval by notice dated 1 June 2015 subject to conditions.
 - The development not requiring approval is the change of use of ground floor B1 (office) to C3 (dwelling).
 - The conditions in dispute are Nos. 2, 3 and 4 which state that: 2) The first floor shall be used only as an annex incidental to the residential enjoyment of 6 Stainton Court. The planning permission hereby granted shall not be construed as permitting its use as a separate dwelling unit; 3) The window openings in the west elevation of the entire building shall be permanently glazed with obscured or frosted glass; 4) Prior to any development involving external alterations, details shall be submitted for approval to the local planning authority and shall include precise details of the type, material and arrangement of these alterations. They shall be installed as approved and retained thereafter.
 - The reasons given for the conditions are: 2) To comply with the requirements of the NPPF core planning principles and to protect the existing residential character of the locality; 3) To comply with the requirements of the NPPF core planning principles and to protect the privacy of neighbouring residents; 4) To ensure the development is of a high quality design in accordance with policy CS8.10 of the adopted South Lakeland Core Strategy and saved policy S2 of the South Lakeland Local Plan.
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Decision

1. The appeal is not valid.

Application for Costs

2. An application for costs was made by Mr and Mrs DH Coates against South Lakeland District Council. This application will be the subject of a separate Decision.

Background and Main Issues

3. The Council confirmed that no prior approval was necessary to alter the use of a small office on the ground floor of a converted agricultural building to a self-contained residential unit. The appellants are seeking permission to implement the change of use without complying with conditions 2, 3 and 4 of that notice. These conditions seek to restrict the use of the first floor, ensure that the
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entire western elevation is obscurely glazed and control permitted development rights.

4. Given the above, the main issues are whether the appeal is valid and if so, the effect that varying or removing the conditions would have on the character and appearance of the local area and the living conditions of neighbouring residents with regard to privacy.

Reasons

5. Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits a change of use subject to the conditions, limitations and restrictions applicable to the development permitted and the provisions of paragraph W. This states that a local planning authority may grant prior approval unconditionally or subject to conditions reasonably related to the subject matter of the prior approval or to mitigate negative impacts on the amenity of any adjoining premises.
6. However, in this particular instance the Council have clearly indicated that no prior approval for the proposed change of use is necessary in their decision notice. Consequently, there is no lawful basis for the imposition of conditions and an appeal against the grant of an approval under a development order, subject to conditions, is therefore not valid.
7. Even if it was the intention of the Council to grant prior approval, despite the wording of its decision notice, the disputed conditions would still be invalid for the following reasons:
 - Condition 2, which restricts the use of first floor, is attempting to impose a condition on a different planning unit to the one covered by the permitted development right and is thus inappropriate;
 - Condition 3, which requires obscure glazing in the western elevation, is not necessary because Article 3(4) of the GPDO does not permit any development contrary to a condition that has already been imposed. The Class O permitted development right is only for the change of use and does not remove the condition associated with the original conversion of the building; and
 - Condition 4, which requires approval for external alterations, is not valid because the dwelling that would be created is a flat. Consequently, there would be no established permitted development rights under Class A of the GPDO as a flat is not a dwellinghouse under the terms of Article 2. Any alterations affecting the external appearance of the building would thus require planning permission.

Conclusion

8. For the above reasons and having regard to all other matters raised, I conclude that the appeal is not valid.

Roger Catchpole

INSPECTOR