
Appeal Decision

Site visit made on 7 December 2016

by John Dowsett MA DipURP DipUD MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/M0933/W/16/3155490

Bush Green, Foxfield Road, Broughton in Furness, Cumbria LA20 6BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr D Palmer against the decision of South Lakeland District Council.
 - The application Ref: SL/2015/1165, dated 16 December 2015, was refused by notice dated 11 February 2016.
 - The application sought planning permission for erection of annex and installation of sewage treatment plant without complying with a condition attached to planning permission Ref: SL/2012/0877, dated 13 February 2013.
 - The condition in dispute is No 6 which states that: The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Bush Green and shall not be sold, let or otherwise disposed of as a separate dwelling unit.
 - The reason given for the condition is: To ensure that the proposed development does not result in the establishment of a separate residential unit. The site is located in an area where only dwellings to meet an essential local need are permitted.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of an annex and installation of sewage treatment plant at Bush Green, Foxfield Road, Broughton in Furness, Cumbria LA20 6BY in accordance with the application Ref: SL/2015/1165 dated 16 December 2015, without compliance with condition number 6 previously imposed on planning permission Ref: SL/2012/0877 dated 13 February 2013, and subject to the new conditions set out in the attached schedule.

Procedural matter

2. Planning permission SL/2012/0877 describes the development as "erection of annex and installation of sewage treatment plant". The appellant states that this is not the wording used on the original planning application form and that the description was changed without the agreement of the appellant. The evidence from the parties shows that the original wording was for a "New ancillary dwelling and treatment plant". I saw on my site visit that the building which is the subject of this appeal is a freestanding structure, separated by some distance from the main house and that it has the characteristics of a small dwelling. To a degree, this is a semantic argument as an annex is capable of being a freestanding supplementary building. The Section 73
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application that forms the subject of this appeal was clear that it sought a rewording of Condition 6 to remove the requirement that the building be occupied only as ancillary accommodation to Bush Green and replace this with a local occupancy requirement. The practical effect of this, regardless of the description of the development on the original planning permission, would be to sever the relationship between the main house and the annex and to create a separate dwelling, albeit one that could only be occupied by persons meeting certain specified requirements.

3. I also note that the decision notice issued by the Council in respect of the appeal proposal describes the proposal as the 'removal of Condition 6' whereas the planning application form states that the application sought the condition 'to be reworded to remove the ancillary requirement and to be replaced by a local occupancy condition and/or s106 agreement'. The appellant again states that the description of the application was changed without their agreement and no confirmation that a revised description of the development was agreed has been provided by the Council. As the planning application specifically sought to replace the current occupancy restriction of the building with a different form of occupancy restriction, and not the complete removal of the condition to allow unfettered occupancy, I have therefore determined the appeal on the basis that the proposal seeks a variation of the condition rather than its removal.

Main Issue

4. The main issue in this appeal is whether it is necessary to restrict the occupancy of the building to purposes ancillary to the residential use of Bush Green.

Reasons

5. The appeal building is a detached, two bedroom, bungalow within the current garden area of the main house, Bush Green. It has rendered walls with the roof finished in metal roofing panels and stands on a substantial brick plinth approximately 0.9 metres high. It is located approximately 30 metres from the main house and the land on which it stands is capable of having an independent vehicular access from a private road to the west of the site.
6. Policy CS1.1 of the South Lakeland Core Strategy 2010 (Core Strategy) sets out sustainable development principles including: protecting the countryside for its intrinsic beauty; directing most new development to existing service centres; and minimising the need to travel. It also sets out a sequential approach to development. This general sequential approach has been superseded by the National Planning Policy Framework (the Framework) and consequently this element of Policy CS1 is not wholly consistent with national policy. Policy CS1.2 establishes a settlement hierarchy, which seeks to direct new development firstly to Principal Service Centres followed by Key Service Centres, Local Service Centres, then finally smaller villages and the countryside. Within this Broughton-in-Furness is identified as a Local Service Centre.
7. Policy CS1.2 states that approximately 21% of new housing and employment development will be in the network of Local Service Centres. It also sets out that new development will be permitted in the countryside where it has an essential requirement for a rural location, is needed to sustain existing

- businesses, provides for exceptional needs for affordable housing, is an appropriate extension of an existing building or involves the appropriate change of use of an existing building. The appeal building is located just outside the development boundary for Broughton-in-Furness.
8. Core Strategy Policy CS6.4 sets out a rural exception policy for affordable housing. This includes a criterion that the housing should be for people with a local connection.
 9. The effect of varying Condition 6 would be to create a new dwelling, independent of Bush Green, and outside of the settlement limit for Broughton-in-Furness. This would be contrary to Core Strategy Policies CS1.2 and CS6.4 as it would not meet the exceptions set out in the former and, as the building is not being promoted as affordable housing, it does not fall within the scope of the latter.
 10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications and appeals must be determined in accordance with the development plan unless material considerations indicate otherwise. The appellant suggests that the original planning permission for the building represents a fallback position that should be taken into account in considering the present proposal, as the building can legitimately be constructed, completed and occupied, provided that this is within the terms of the original planning permission. The existence of a fallback position would be a material consideration.
 11. It is necessary to consider whether there is a realistic prospect of any fallback position being implemented. I saw on my site visit that the building is at a very advanced stage of construction, the outer shell is complete and weathertight. Internally the walls were plastered and there were fixtures and fittings in place, although the final fix of the building was not complete. The building has electrical power and drainage connections were in place. Only a small amount of further work would be required to complete the building and render it habitable.
 12. The Council recognise that Condition 6 does not prevent the completion or occupation of the building in accordance with the terms of the planning permission. The appellant has not indicated that there is an intention to discontinue work on the building. From the evidence before me and the current advanced stage of construction, I can see no reason why the current extant planning permission would not be fully implemented. This would result in a new, freestanding and self-contained, residential building beyond the settlement limit for Broughton in Furness, albeit one that is subject to an occupancy restriction.
 13. This is a material consideration which must be given appropriate weight in determining the appeal. In determining the weight that should be given to the fallback position, the principle question is whether the fallback scheme is less desirable than the appeal scheme.
 14. Planning permission was granted for the building on the basis that it was to provide ancillary accommodation at Bush Green, originally intended for an elderly relative. The policies in the development plan do not make reference to residential annexes in the exceptions specified within them. The wording of Condition 6 merely requires that the building be occupied for purposes ancillary

to the residential occupation of Bush Green and does not restrict it to particular individuals or indeed to family members. The building has no dependence on Bush Green for shared facilities and, even if it were occupied in accordance with the planning permission, would to all intents and purposes function independently of it.

15. Whilst this would not be inherently less desirable than what is proposed, it would be essentially similar to the appeal proposal other than the connection of the occupants to the occupiers of Bush Green. Consequently, I consider that this fallback position weighs moderately in favour of the proposal.
16. The Framework is also a material consideration. Paragraph 55 of the Framework relates to new homes in rural areas and states that new housing should be located where it will enhance or maintain the vitality of local communities. The proposal would lead to some small scale expenditure in the local economy and provide a small amount of additional housing for local people. Broughton-in-Furness is identified in the Core Strategy as a Local Service Centre which can accommodate additional residential development.
17. Paragraph 55 also states that isolated new homes in the countryside should be avoided unless there are special circumstances. Whilst the proposal does not meet any of the circumstances identified, this is not a closed or exhaustive list. Moreover, given that the appeal building is located just beyond the development boundary of Broughton-in-Furness and is within walking distance of the range of services and facilities there; is within the garden of an existing dwelling and adjacent to a small commercial development, it is difficult to see an argument that it would represent an isolated new home.
18. No specific harm that would arise from the use of the building as a separate dwelling other than non-compliance with the policy restrictions on new build outside of defined settlement limits has been identified. Nor is it suggested that one new dwelling would significantly prejudice the implementation of the development strategy set out in Core Strategy CS1.2.
19. Whilst there is some disagreement between the parties as to whether the appellant should have continued with the construction of the building following the change in circumstances with respect to the original intended occupier, it is common ground that there is no legal impediment to the completion of the building. This would result in the creation of a small dwelling that would potentially be under-occupied for long periods of time.
20. The planning application sought to replace Condition 6 with a condition restricting occupation of the building to persons with a local connection. I note the Council's point that it does not have a policy in respect of local occupancy restriction and that at the time of the Core Strategy Examination in Public it was determined that there was an insufficient evidence base to support such a policy. Nonetheless, as the Core Strategy was adopted in 2010, this evidence was considered some time ago. The appellant has submitted evidence in the form of more recent newspaper articles which indicate that the Council clearly has concerns regarding increasing numbers of second homes and holiday lets and diminishing numbers of homes being available to local people.
21. There does not necessarily have to be a policy basis for imposing a condition on a planning permission, however, a condition must meet the tests set out in the Framework and the Planning Practice Guidance. The Framework also requires

that consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of conditions.

22. From the evidence before me, it is apparent that the Council have concerns in respect of the lack of housing for local people as a result of the demand for second homes and holiday lets in the local housing market. The appeal proposal would make a modest contribution towards the provision of housing for local people. Whilst it would not be an affordable dwelling as defined by the Framework and Policy CS6.4 of the Core Strategy, the presence of an occupancy condition will have an effect on the market value of a property. The appellant states that an occupancy condition typically reduces the market value by 30% and this is not challenged by the Council. This would make the property more accessible to local people than other properties on the open market and prevent the building from becoming a second home or holiday let.
23. Within this context there is a persuasive argument that a local occupancy condition would provide a benefit by making an additional dwelling available to local people. I have had regard to the Council's point that in future it may be sought to have any local occupancy condition removed. However, any future application would need to be supported by compelling evidence that the condition was not necessary.
24. I am satisfied that the local occupancy condition proposed by the application meets the relevant tests in the Framework and the Planning Practice Guidance and I note that the Council also acknowledge that it reflects the wording that is used elsewhere and that it appears sound.
25. The Council suggest that it is necessary to consider the proposal against Saved Policy T4 of the South Lakeland Local Plan and Alterations – Final Composite Plan 2007. However, this policy relates to the provision of self-catering holiday accommodation and, consequently, I do not consider that it is relevant to the proposal which forms the subject of this appeal.
26. Although the proposal would not meet the requirements of Core Strategy Policies CS1, CS1.2 and CS6.4, the existence of a fallback position that is, in effect, essentially similar to the appeal proposal weighs in favour of the proposal. In addition to this, the proposal would have some benefits in terms of additional expenditure in the local economy, prevent under-occupation of a residential unit and allow the provision of a house that is available solely for local occupation. This also weighs in favour of the proposal. Although technically located in the countryside as a result of not being within a defined settlement limit, the building is not isolated. No specific harm which would arise from the proposal has been identified in the evidence. Together these factors represent material considerations that justify a decision other than in accordance with the development plan.
27. I therefore conclude that it is not necessary to restrict the occupancy of the building to purposes ancillary to the residential use of Bush Green and that Condition 6 can be replaced by a local occupancy condition.

Conditions

28. I have had regard to the local occupancy condition suggested by the appellant and consider that it is necessary to ensure that the building is occupied as proposed in the planning application by persons with a defined local need.

29. The Council have not suggested that any other conditions are necessary. As the development has already been commenced, it is not necessary to attach a condition setting a time period for the commencement of works. The remaining conditions on the original planning permission are a condition specifying the approved plans and pre-commencement conditions relating to approval of materials and an assessment of potential land contamination. The building is practically complete barring internal fitting out and it is not suggested that the building has not been constructed in accordance with plans which have been approved by the Council or that the pre-commencement conditions have not been discharged. Condition 4 of the original planning permission required drainage arrangements to be approved and implemented prior to the occupation of the development. Whilst I saw that there are some drainage connections to the building, I do not know if this condition has been discharged. Technically it is still operative as the building is not occupied and, consequently, it is necessary to attach it.

Conclusion

30. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be allowed.

John Dowsett

INSPECTOR

Schedule of conditions

1. The dwelling house hereby permitted shall not be occupied otherwise than by a Person with a Local Connection as his or her Only or Principal Home, or the widow or widower of such a person, and any dependents of such a person living with him or her.

The Occupant will supply to the Local Planning Authority (within 14 days of the Local Planning Authority's written request so to do) such information as the Authority may reasonably require in order to determine whether this condition is being observed. In this condition the following definitions apply:

'Person with a Local Connection' means an individual who before taking up occupation of the dwelling satisfies one of the following conditions:

- (1) The person has been in continuous employment in the Locality defined for at least the last nine months and for a minimum of 16 hours per week immediately prior to occupation; or
- (2) The person needs to live in the Locality defined because they need substantial care from a relative who lives in the Locality defined, or because they need to provide substantial care to a relative who lives in the Locality defined. Substantial care means that identified as required by a medical doctor or relevant statutory support agency; or

- (3) The person has been continuously resident in the locality defined for three years immediately prior to:
- a) Needing another dwelling resulting from changes to their household, including circumstances such as getting married, divorced, having children, or downsizing.
 - b) Undertaking full-time post-secondary education or skills training and is returning to the locality defined within 12 months of its completion, or
 - c) Being admitted to hospital, residential care or sentenced to prison, and are returning to the locality defined within 12 months of their discharge/release, or
- (4) The person is a person who –
- a) Is serving in the regular forces or who has served in the regular forces within five years prior to occupation;
 - b) Has recently ceased, or will cease to be entitled, to reside in accommodation provided by the Ministry of Defence following the death of that person's spouse or civil partner where:
 - i. The spouse or civil partner has served in the regular forces; and
 - ii. Their death was attributable (wholly or partly) to that service; or
 - c) Is serving or has served in the reserve forces and who is suffering from a serious injury, illness or disability which is attributable (wholly or partly) to that service

'Locality' shall mean the administrative areas of the Parishes of: Duddon, Ulpha, Millom Without, Kirkby Ireleth, Torver, Coniston, Eskdale, Wicham, Askham and Ireleth, Pennington, Blawith and Subberthwaite, Lowick, Egton with Newland, Mansriggs and Osmotherley.

An 'Only or Principal Home' is a dwelling house which is occupied continuously for a minimum period of six months in every twelve- month period. For the avoidance of doubt the dwelling shall not be occupied as a second home or for holiday letting accommodation.

The obligations contained in this condition shall not be binding or enforceable against any mortgagee or any receiver appointed by such a mortgagee, or any person deriving title through such a mortgagee or receiver provided always that a successor in title of such a person will be bound by the obligations contained in this condition.

2. The development shall not be occupied until works for surface water management and the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details to be submitted to and approved in writing by the Local Planning Authority. The approved works shall be retained as such thereafter.