
Appeal Decision

Site visit made on 31 January 2017

by I Jenkins BSc CEng MICE MCIWEM

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

Decision date: 7 March 2017

Appeal Ref: APP/X1355/D/16/3163640

Grey Stones, Cotherstone, Barnard Castle, DL12 9PF

- 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 S Crowe against the decision of Durham County Council.
 - The application Ref DM/16/02844/VOC, dated 31 August 2016, was refused by notice dated 2 November 2016.
 - The application sought planning permission for erection of detached single storey annexe to rear without complying with conditions attached to planning permission Ref. DM/16/00769/FPA, dated 18 July 2016.
 - The conditions in dispute are nos. 4 & 5 which state that: 4) All parking and vehicular access for the development hereby approved shall take place from the existing West Green access to Grey Stones. There shall be no vehicular access or parking associated with the approved development taken from/at the Leadpipe Lane access; and, 5) the development hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Grey Stones. It shall not be occupied or sold as a separate unit of residential accommodation.
 - The reasons given for the conditions are: 4) In the interests of highway safety and to comply with policy GD1 of the Teesdale Local Plan; and, 5) to prevent the establishment of a separate dwellinghouse with substandard vehicle access/parking. In accordance with Policy GD1 of the Teesdale Local Plan.
-

Decision

1. The appeal is allowed in part and planning permission is granted for the erection of detached single storey annexe to rear at Grey Stones, Cotherstone, Barnard Castle, DL12 9PF in accordance with the application Ref. DM/16/02844/VOC, dated 31 August 2016, without compliance with condition nos. 1 and 5 previously imposed on planning permission Ref. DM/16/00769/FPA, dated 18 July 2016, but subject to the other conditions imposed therein, including condition no. 4, so far as the same are still subsisting and capable of taking effect and subject to the following new conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from 18 July 2016.
 - 5) The development hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Grey Stones.
-

Main Issue

2. I consider that the main issue in this case is the effect that removing condition nos. 4 and 5 would have on highway safety.

Reasons

3. Grey Stones is a substantial detached house, which is accessed at the front from West Green along a driveway that leads to a parking area on the southern side of the house and a gateway to the rear garden of the property, which contains an outbuilding and garage in landscaped grounds. An end of terrace house, which fronts onto Leadpipe Lane, backs directly onto the northern section of the western, rear boundary of Grey Stones' back garden. Alongside the southern sidewall of this neighbouring dwelling is a gated accessway, which runs from Leadpipe Lane to the rear garden of Grey Stones and is sufficiently wide to accommodate vehicular traffic.
4. In 2016 the Council granted planning permission Ref. DM/16/00769/FPA for the erection of a detached single-storey annexe to the rear of Grey Stones. The approved building would be situated within the back garden of Grey Stones, between its garage and the terraced house that abuts its rear boundary.
5. Condition no. 4 seeks to ensure that all parking and vehicular access for the approved development would take place from the existing West Green access to Grey Stones, with no vehicular access or parking associated with the accessway off Leadpipe Lane. The Council has indicated that this is necessary in the interests of highway safety. The appellant takes the view that this condition is neither necessary, relevant to the development permitted nor enforceable.
6. I understand that the Highway Authority does not have any record of injury accidents occurring on Leadpipe Lane and I have not been provided with any other record of accidents. Nonetheless, based on the evidence before me, it appears that the entrance to the site off Leadpipe Lane has been used only infrequently in the past, for activities such as removing material from the garden as well as driving to and from the garage. Whilst I acknowledge that activity such as this, unrelated to the annexe, would not be restricted by condition no. 4 and may continue in the future, I have no reason to believe that the frequency is likely to increase.
7. The internal layout of the previously approved annexe includes a bedroom, a kitchen/lounge, a bathroom and a hall. I agree with the Council that it would have sufficient internal facilities to allow residents to live independently of the facilities within Grey Stones. The appellant has indicated that occupants of the annexe are likely to be elderly or infirm people and that in all probability they would not be car drivers. However, there is no guarantee of that and in my view, it would be reasonable to consider the appeal on the basis that the one bedroom building may well be occupied by 2 people, at least one of whom would be a driver. Furthermore, in the absence of the restriction imposed by condition no. 4, it is likely that there would be a significant increase in the use of the Leadpipe Lane entrance by vehicular traffic, with a number of daily vehicle movements to and from the site associated with the annexe.
8. Leadpipe Lane, which serves a number of residential properties, comprises a narrow, single lane carriageway, with a winding horizontal alignment. The lane

does not have separate footways and the carriageway is used as a shared surface by vehicles and pedestrians. As a result of these characteristics, I acknowledge that drivers are likely to proceed along the lane with caution and at relatively low speeds. The rear entrance to Grey Stones off Leadpipe Lane is flanked to the north by the frontage of the garage of the neighbouring terraced house. Immediately to the south of the appeal site entrance there is a section of garden wall, a short distance to the south of which is a sharp bend in the road, which restricts forward visibility when approaching from the south.

9. As a result of the obstructions to intervisibility to the south of the appeal site entrance, if a driver is approaching from the south at the same time as another is emerging from the appeal site, I consider that they would be unlikely to see one another until it is too late to avoid a collision, notwithstanding that they would be likely to be travelling with caution and at relatively low speeds. When I visited, a car was parked at the side of the road between the site entrance and the bend in the lane, reducing intervisibility even further. I have no reason to believe that these conditions were unusual and this adds to my concerns. By comparison, use of the neighbouring garage to the north of the site entrance would be likely to be less hazardous, as it is further from the bend and roadside parking that I have identified.
10. In light of the particularly poor intervisibility between drivers emerging from the appeal site onto Leadpipe Lane and others approaching from the south, I consider that the increase in use of this entrance by vehicular traffic, which would be likely to result from the removal of condition no. 4, would have a material detrimental effect on highway safety.
11. Whilst there are 2 exits from Leadpipe Lane onto the wider highway network, the southerly exit is much further from the appeal site entrance than that to the north. Therefore, it is most likely that the northern junction would be used by appeal site traffic. Intervisibility between drivers emerging from the northern end of Leadpipe Lane onto the B6277 and those approaching from the southeast is poor. The increase in traffic emerging from Leadpipe Lane at this junction associated with the approved annexe would be likely to increase the risk of accidents, albeit to a limited degree, to the detriment of highway safety.
12. I consider overall that the removal of condition no. 4 would be likely to have a significant adverse effect on highway safety and the condition is necessary, in the interests of highway safety.
13. As observed by the appellant, the condition does not seek to prevent the use of the existing access, except in association with the approved annexe. It is the harm arising from the increased traffic likely to be associated with the annexe that the condition seeks to address. This approach accords with the advice set out in the national *Planning Practice Guidance* (PPG) that a condition cannot be imposed in order to remedy a pre-existing problem or issue not created by the proposed development. In my judgement, the condition is relevant to the development permitted.
14. Although within its garden, the approved annexe would be detached and set apart from Grey Stones, with its own entrance door. Under these circumstances, I consider that it would be reasonably straightforward, over a short period of monitoring and investigation, to establish whether traffic using the entrance is associated with people inhabiting or visiting the annexe. In my judgement, condition no. 4 is likely to be enforceable.

15. I conclude that condition no. 4 is: necessary in the interests of highway safety; relevant to the development permitted; and, enforceable. Removal of the condition would conflict with Policy GD1 of the *Teesdale Local Plan, 2002* (LP), which requires the provision of safe access, in common with the *National Planning Policy Framework* (the Framework).
16. Condition no. 5 states that *'the development hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as Grey Stones. It shall not be occupied or sold as a separate unit of residential accommodation'*.
17. I deal first with the first sentence of condition no. 5, which the appellant considers to be unnecessary. The appellant has confirmed his intention that the approved building would be used for purposes ancillary to Grey Stones. That purpose is not explicitly stated in the description of the development set out on the planning permission, which is *'erection of detached single storey annexe to rear'* and in this respect condition no. 5 provides clarity.
18. Furthermore, as I have indicated, the approved building would have sufficient internal facilities to allow residents to live independently of the facilities within Grey Stones. Furthermore, pedestrian access would be available from Leadpipe Lane. However, provision of adequate vehicular access and parking facilities is also necessary, the absence of which, to my mind, would be likely to lead to residents seeking alternatives, such as using Leadpipe Lane for those purposes, to the detriment of highway safety. Whilst other conditions could be imposed to the same end, the constraint imposed by the first sentence of condition no. 5 provides some assurance that the West Green access to Grey Stones and the parking facilities to the south of the house would be a shared facility, available to residents of the annexe, given its ancillary status. In my judgement, removal of the first sentence of condition no. 5 would be likely to harm highway safety, contrary to the aims of LP Policy GD1 and the Framework. I consider that limb of the condition to be reasonable and necessary, in the interests of clarity and highway safety, and it meets the other tests of conditions set out in the Framework.
19. Turning to the second sentence of condition no. 5, which the appellant considers is neither necessary, reasonable, relevant nor enforceable. With the first sentence in place, I consider that stating the building *'shall not be occupiedas a separate unit of residential accommodation'* amounts to unnecessary duplication. Furthermore, separate ownership of Grey Stones and the annexe would not negate the safeguards set out in the rest of the planning permission or harm interests of acknowledged importance. In my judgement, the removal of the second sentence of condition no. 5 would be unlikely to result in harm to highway safety. I consider that it is neither reasonable nor necessary.

Conclusions

20. I conclude on balance that the removal of condition no. 4 and the first sentence of condition no. 5 would be likely to harm highway safety, it would not amount to sustainable development under the terms of the Framework and would conflict with the Development Plan taken as a whole. However, the second sentence of condition no. 5 is neither reasonable nor necessary, in the interests of highway safety. Therefore, I conclude that the appeal should be allowed in order to modify condition no. 5, by deleting its second sentence, which states

'It shall not be occupied or sold as a separate unit of residential accommodation'.

21. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. In respect of condition no. 1, the commencement condition; it would be necessary to amend this condition, to ensure that the time limit for commencement of the development remains the same as that stated in planning permission Ref. DM/16/00769/FPA. As I have no information before me about the status of the other conditions imposed on the original planning permission, it would be necessary to re-impose them. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

I Jenkins

INSPECTOR