
Appeal Decision

Site visit made on 5 April 2017

by **S J Lee BA(Hons) MA MRTPI**

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

Decision date: 2nd May 2017

Appeal Ref: APP/W4223/W/16/3165685

Hillside, Nicker Brow, Dobcross, Oldham OL3 5NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr & Mrs M Aston against the decision of Oldham Metropolitan Borough Council.
 - The application Ref HH/339269/16, dated 13 October 2016, was approved on 14 December 2016 and planning permission was granted subject to conditions.
 - The development permitted is erection of detached garage (Resubmission of HH/337478/15).
 - The condition in dispute is No 4 which states that: *The outbuilding shall be used for the garaging of private motor vehicles and for private use incidental to the enjoyment of the dwellinghouse only and not for trade, business or any other purposes.*
 - The reason given for the condition is: *To protect the amenities of occupiers of nearby properties.*
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Decision

1. The appeal is allowed and the planning permission Ref HH/339269/16 for erection of detached garage (Resubmission of HH/337478/15) at Hillside, Nicker Brow, Dobcross, Oldham OL3 5NN granted on 14 December 2016 by Oldham Metropolitan Borough Council, is varied by deleting condition 4.

Main Issue

2. The main issue in this case is whether the disputed condition is necessary to protect the living conditions of neighbouring occupants.

Reasons

3. Planning permission has been granted for a detached garage to the rear of the dwelling known as Hillside. The disputed condition seeks to limit the use of the building to the garaging of private motor vehicles and other private uses incidental to the enjoyment of the dwelling and not for any trade, business or other use. The reason given for the condition is to protect the amenities of nearby residents, though what aspect of this the Council are particularly concerned about is not made clear.
 4. The approved plans for the development make it clear that the building would be used for both the garaging of a car and for a home gym and storage. The Council's officer report concluded that the development would not result in any harm to the amenity of nearby properties. The building would be reasonably well separated from the short row of cottages within which Hillside is situated and any noise generated from the parking of the car or use of the gym would
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not be unusual in a residential area. There would be one small window in the front of the building, but owing to the relationship of the garage to the nearest dwellings, this would be unlikely to lead to any issues relating to privacy. The only other proposed windows are rooflights in the rear roof slope. These would provide neither an opportunity to see into neighbouring properties or for people to see into the garage.

5. I am satisfied therefore that the normal use of the garage would not lead to material harm to the living conditions of nearby residents, particularly in terms of noise, disturbance or privacy and thus agree with the Council's conclusions on this issue. Paragraph 206 of the National Planning Policy Framework (the Framework) and the National Planning Practice Guidance (PPG) make it clear that conditions should only be imposed where, amongst other things, they are necessary and relevant to the development to be permitted.
6. The Council has not identified any harm in relation to the living conditions of nearby occupants and thus it is not clear why the condition would be necessary in this case. The officer report and wording of the condition suggests the Council were not concerned about its use as a home gym or storage. These are activities incidental to the enjoyment of the dwelling and thus the ability to use the building for such purposes is implicit within the grant of permission. In these circumstances, there is no need for a condition specifying this.
7. As the permission relates to a domestic garage a condition prohibiting a trade or business use is also not directly relevant. Irrespective of speculative comments made by some interested parties, there is no substantive evidence to suggest there is any intention to use the building for a non-domestic purpose. Nor is such a condition necessary, since the introduction of a trade, business or any other activity which gave rise to a material change of use of the building would require planning permission. In such circumstances, the Council would still be able to exercise control over its interests in terms of the living conditions of neighbouring residents.
8. As such, I consider that with or without the disputed condition, there would be no material harm to living conditions of nearby occupants. In light of this, and without any convincing evidence substantiating or justifying the Council's position, I find that condition 4 is both unnecessary and not relevant to the development permitted. The reason for the condition does not refer to any relevant development plan policies. However, Policy 9 of the Oldham Local Development Framework Joint Core Strategy and Development Management Policies Development Plan Document (2011) seeks, amongst other things, to ensure development does not cause significant harm to the amenity of existing occupants. The deletion of this condition would not result in conflict with this policy.

Conclusion

9. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

S J Lee

INSPECTOR