The Planning Inspectorate

Appeal Decision

Site visit made on 7 June 2017

by John Morrison BA (Hons) MSc MRTPI

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

Decision date: 23 June 2017

Appeal Ref: APP/K2420/W/17/3171542
Hideaway, 4B Hunt Lane, Witherley CV9 3LH

- 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 P Lee against the decision of Hinckley & Bosworth Borough Council.
- The application Ref 16/00973/HOU, dated 19 October 2016, was approved on 14 December 2016 and planning permission was granted subject to conditions.
- The development permitted is the erection of a single storey link between the garage and the dwelling.
- The condition in dispute is No 6 which states that *'Within three months of the date of this decision, the dormer windows on the rear elevation of the garage shall be obscurely glazed to a minimum of level 3 of the Pilkington scale.'*
- The reason given for the condition is *'To protect the privacy and amenities of the occupiers of neighbouring properties to accord with Policy DM10 of the Site Allocations and Development Management Policies DPD.'*

Decision

1. The appeal is allowed and the planning permission Ref 16/00973/HOU for the erection of a single storey link between the garage and the dwelling at Hideaway, 4B Hunt Lane, Witherley CV9 3LH, granted on 14 December 2016 by Hinckley & Bosworth Borough Council, is varied by deleting condition 6 and substituting it for the conditions set out below:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans: 15794/P010; 15794/P09; 15794/P04B and 15794/P03A.

    2) The materials to be used on the external elevations of the extension hereby permitted shall match the corresponding materials of the existing dwelling.

Procedural Matter

2. I have taken the description of development as it appears on the appeal form as this is the most accurate. It is clear that the Council are content with this approach since the same description appears on their decision notice. I have proceeded on this basis.

Main Issue

3. The main issue is whether condition 6 of the above mentioned planning permission is reasonable and necessary in the interests of the privacy of the occupiers of Number 2 Hunt Lane.

Reasons

4. Condition 6 requires the dormer windows on the rear elevation of the first floor of the garage to be obscurely glazed. A level on the industry recognised Pilkington Scale is set out. The effect of the condition is to protect the privacy of the occupiers of Number 2 Hunt Lane. As one of the dormers accommodates a bathroom, the glazing is already obscure.

5. Both dormer windows have a direct line of site towards the rear garden of No 2 but the far end of it. The garden is very extensive and views towards it are significantly hampered by substantial vegetation on the shared garden boundary. Even in the event that this vegetation was not present, views towards the rear of No 2 would be oblique at best and some considerable distance away from any area at the immediate rear where the expectation for more private areas of external garden space are that much greater.

6. Taking these factors together, I am satisfied that the privacy of the occupiers of No 2 would not be compromised to an unacceptable degree by the use of clear glass in the dormer windows. Condition 6 is therefore unnecessary and I allow its removal. In the absence of condition 6, it is my view that the proposed development would still accord with Policy DM10 of the Local Plan[1]. This policy, amongst other things and along with one of the core principles of the Framework[2], seeks to ensure that development does not have an adverse effect on the privacy of nearby residents.

Conditions

7. I have regard to the conditions attached to the original planning permission. I have re imposed the conditions set out above for the reasons detailed below, making some changes to the wording in the interests of clarity and enforceability.

8. Since the development in respect of the link between the garage and the dwelling was nearing completion at the time of my visit, it seems clear to me that it has commenced. The standard time condition (Condition 1) therefore has no further purpose. I have however specified the approved plans for certainty and in the interests of an appropriate finished appearance, I have set out that all external materials shall match the corresponding materials of the existing dwelling.

9. The approved plans show the first floor of the garage as a, albeit small, self-contained residential use. The work has been carried out and it provides for a single bedroom with en suite bathroom, a kitchen and living space. The planning permission that preceded the scheme subject of this appeal[3] set this space out as 'hobby room'.

[1] Hinckley and Bosworth Borough Council Local Plan 2006-2026: Site Allocations and Development Management Policies Development Plan Document 2016
[2] The National Planning Policy Framework 2012
[3] Hinckley and Bosworth Council reference 15/00759/HOU

10. Be this as it may, planning permission has been granted for the internal layout as shown on the more recently approved plans referred to by a separate condition. It is equally clear that planning permission has not been granted for an independent dwelling. The accommodation in the first floor is as well as or ancillary to the existing dwelling. As a matter of fact, further planning permission would be required should it ever be occupied independently. Put simply, its use would materially change. Further, it does not appear to be the intention for the first floor to be occupied independently since access to it is shared with the existing dwelling. Given its size, proximity to the dwelling and it being part of an existing ancillary building this would likely still be the case in the event that the link was ever severed. The need for planning permission would always stand regardless.

11. In this context, I have not been provided with any compelling evidence as to precisely why the approved porch needs to be erected prior to the occupation of the garage and retained thereafter beyond the reason for the condition which is in the interests of protecting residential amenity. Taking into account my findings above the re imposition of condition 4 would be unnecessary. Further, and largely for the same reasons, a condition restricting the occupancy of the first floor (condition 5) seems to me to be superfluous. I have not therefore imposed it either.

Other Matters

12. I acknowledge the comments submitted by local residents and the Parish Council, particularly in respect of the use of the first floor of the garage. To re iterate what I have set out above, that layout formed part of the planning application that was consulted upon, considered and ultimately granted by the Council. Planning permission was not granted for an independent residential unit. This would be considered as development in its own right for which a further planning permission would be required.

Conclusion

13. For the reasons set out above I have found that condition 6 of the original planning permission is unnecessary and is hereby removed. Subject to the conditions set out in the schedule, the appeal is allowed.

John Morrison

INSPECTOR