
Appeal Decision

Site visit made on 28 June 2017

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 9th August 2017

Appeal Ref: APP/D3125/W/16/3163683

Little Willow, Oxford Road, Eynsham, Witney, OX29 4BT.

- 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 E Price and Ms J Hoggett against the decision of West Oxfordshire District Council.
 - The application Ref. 16/01589/FUL, dated 12 May 2016, was approved on the 21 July 2016 and planning permission was granted subject to conditions.
 - The development permitted is a replacement amenity block.
 - The condition in dispute is No.4 which states that "The amenity block hereby permitted shall only be used by members of the Price family at the site known as Little Willows: if the amenity block becomes no longer required or the site is sold on by the Price family the amenity block shall be removed and the land shall be restored to its former state before it is reoccupied."
 - The reason given for the condition is "In the interests of visual and residential amenity"
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Decision

1. The appeal is allowed and the planning permission Ref. 16/01589/FUL for a replacement amenity block at Little Willow, Oxford Road, Eynsham, Witney, OX29 4BT, granted on 21 July 2016 by West Oxfordshire District Council, is varied by deleting condition No.4.

Application for costs

2. An application for costs was made by the appellants against the Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the imposition of condition No.4 serves a proper planning purpose and meets the tests of conditions set out in the National Planning Policy Framework and the national Planning Practice Guidance.

Reasons

Background

4. The appeal site is situated in open countryside to the south-west of Oxford Road close to the toll bridge over the River Thames. The site is partly screened by vegetation along the public realm of the road frontage and by solid gates at the vehicular access.

5. The site has a lengthy planning history where, in summary, planning permission was granted retrospectively in 2010 as a caravan site for one gypsy family but with a condition requiring all of the caravans and the amenity building to be removed from the site as soon as the land ceased to be used by the named occupants. This condition was subsequently varied in 2012 and 2013 to, in effect, allow occupation by any 'gypsies and travellers' rather than named occupants, and the appellants say that there was no longer a requirement that the then existing amenity block had to be removed if the site was no longer occupied by the appellants.
6. Planning permission was granted for the development of a replacement amenity block in 2016 and 5 conditions were imposed on this and no.4 is the one disputed. The appellant's supporting evidence for that case indicates that a better utility building was needed to help Mr Price care for his father on site.
7. At the time of site visit, there were two mobile homes on the site together with three touring caravans, a large rudimentary storage shed and a number of vehicles in varying states of repair. The appellants and their agent pointed out where the previously existing utility block had been sited, as shown on the submitted block plan, and pointed out that this had been re-sited to the north-west corner of the site, to avoid the overlap with the block approved.

Condition No.4

8. The reason given for the imposition of condition No.4 is "In the interests of visual and residential amenity" but the reason does not refer to any special personal case put forward to justify the building on a temporary basis. Neither does it specify any policy requirement in the development plan or national guidance to say how interests of visual or residential amenity would be so affected to require the building to be solely used by the members of the Price family or must be removed if they no longer require the use of the building or sell the site. Nor is it clear what 'residential' amenity is to be considered. I did not see other houses close to the site at my site visit and the reference in paragraph 7.4 of the Council's statement to the suggestion that the harm caused would 'perhaps' be to the living conditions of those living on site, is vague and lacks the necessary clarity.
9. Further, the requirements of condition No. 4 appear to be at odds with the terms of the original permission, as modified, which allow general use by a gypsy or traveller family. The size of the amenity block as approved would have the form of a permanent building. I do not agree with the Council that it is 'unnecessarily large' or that it would cause visual harm to the locality. It is of a modest scale and will not be very apparent from the public realm outside of the enclave of the site or the wider open countryside landscape. It is therefore well suited to a single general gypsy and traveller site pitch. On this basis I see no compelling reason why it should be demolished if the appellants decide to sell the site in due course.
10. Overall, neither the formal reason for refusal nor the lengthy representations submitted by the Council on the appeal make a clear case to show that the imposition of the condition is either 'reasonable' or 'necessary'. I therefore find that the condition does not meet the tests set out in paragraph 206 of the National Planning Policy Framework and the provisions of paragraph of the national Planning Practice Guidance.

11. The Council suggests that if I was minded to conclude that the condition is unreasonable, the whole basis of the permission should be reconsidered, but this would be prejudicial to the appellants as they would be worse off for making an appeal against a condition judged to be 'unreasonable' and in any event, I have found that the replacement amenity building would not cause harm.
12. I have also considered whether the re-sited building that previously existed on the site of the replacement building should be subject to a condition governing its future retention. It is clear to me that the replacement utility block sought was to help meet the special health and social needs of the wider Price family as set out at the time of the application and that the relocatable and smaller existing utility building occupying the same position in the overall site, was inadequate for these special needs. However, in the light of the Council's representations that this relocated structure was unlawful there is not sufficient basis to establish that this other amenity building as re-sited can or should be controlled though a planning condition that meets the appropriate tests. The resolution of this particular issue is therefore for the Council to consider as a separate matter.
13. Overall, I conclude that the condition No.4 is not reasonable as it places a personal and temporary restriction on a building of a permanent nature and that is appropriate for the lawful use of the site. Further, the form, scale and location of the building would not cause any visual harm or harm to residential amenity, which indicate that it should only be allowed for a limited period. The condition therefore does not fulfil a proper planning purpose and its imposition on the permission does not meet the recognised tests in planning policy and guidance.

Conclusions

14. For the reasons given above I conclude that the appeal should be allowed.

David Murray

INSPECTOR

