The Planning Inspectorate

Appeal Decision

Site visit made on 4 September 2018

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2018

Appeal Ref: APP/H0928/W/18/3202108
North of Belmont, South Road, Kirkby Stephen, Cumbria CA17 4SU

- 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 Anthony Metcalfe against the decision of Eden District Council.
- The application Ref 17/0870, dated 7 October 2017, was approved on 7 December 2017 and planning permission was granted subject to conditions.
- The development permitted is the construction of a residential dwelling.
- The conditions in dispute are Nos 5, 7 and 9 which state that:
  5. Prior to the first occupation of the dwelling, a revised parking plan shall be submitted to and approved in writing by the Local Planning Authority. The approved plan shall demonstrate off street parking and turning space allowing vehicles to enter and exit the site in a forward gear. The approved scheme shall be implemented before the first occupation of the dwelling, and shall be retained free of obstruction for its intended use thereafter.
  7. Prior to the first occupation of the dwelling, a plan to demonstrate boundary treatments, including a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full, and shall be retained as such thereafter.
  9. The garage and workshop forming part of the development permitted shall only be used for domestic purposes incidental to the enjoyment of the dwelling and not for any separate residential use or for any industrial, commercial or business use.
- The reasons given for the conditions are:
  5. In the interests of highway safety.
  7. In the interests of the appearance of the area.
  9. To protect the living conditions of occupiers of neighbouring properties.

Decision

1. The appeal is allowed and the planning permission Ref 17/0870 for the construction of a residential dwelling at North of Belmont, South Road, Kirkby Stephen, Cumbria CA17 4SU granted on 7 December 2017 by Eden District Council, is varied by deleting conditions 5, 7 and 9, and substituting them with the following condition:

   7) Prior to the first occupation of the dwelling, a scheme of boundary treatments and a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved timetable, and shall be retained as such thereafter.

Procedural Matters

2. The appellant originally contested condition No 4, but later removed this from their appeal as the matter was resolved separately with the local planning authority (LPA). Thus, the merits of condition 4 have not formed part of my assessment.

3. The National Planning Policy Framework was revised during the assessment of the appeal. Both parties were given with the opportunity to provide comments and I have considered these accordingly.

Background and Main Issues

4. Planning permission was granted for a dwelling, subject to a number of conditions. The appellant has disputed the need for conditions 5, 7 and 9. The Council indicate that these conditions are necessary and reasonable in the interests of highway safety, the appearance of the area and to protect the living conditions of occupiers of neighbouring properties.

5. Accordingly, the main issues are whether the conditions are necessary and reasonable, having regard to:
   i) Highway safety;
   ii) The character and appearance of the area; and
   iii) The living conditions of the occupiers of neighbouring properties.

Reasons

Highway safety

6. The plans before me indicate parking spaces to the front of the site, and I am aware that a revised plan detailing a turning area has been submitted to and approved in writing by the LPA, and that this condition is considered to be discharged. Nonetheless, the appellant sets out that he wishes to be able to reverse into or out of the site, and proposes the condition is removed.

7. Dwellings on the road in the surrounding area featured a mixture of on-street parking and driveways. Those that had driveways rarely featured turning facilities on site. The speed limit for the road is 30mph. The road is straight and the access proposed is wide. The Local Highways' Authority indicate that visibility is good in both directions. I agree. However, reversing out of the site on the carriageway, or indeed into the site may lead to some minor inconvenience to users of the highway. On the other hand, the manoeuvre is carried out by numerous other dwellings on the road and the appellant has no restriction on his existing drive, which this access essentially widens.

8. Additionally, the footpath to the front of the site is very narrow and terminates at the northern end of the site. Thus, the likelihood of pedestrians being on this side of the road would be slim. Indeed, I saw a number of pedestrians walking on the wider footpath opposite and none on the footpath outside the site.

9. Lastly, there is space to the front to facilitate turning on site, as demonstrated by the parking plan, and it would not be unreasonable to assume that given the opportunity, turning on site would take place in the first instance.

10. Consequently, whilst there may be some minor inconvenience caused by reversing in or out of the site, I do not find that this would lead to adverse or

unacceptable highway safety issues, particularly considering the speed limit, visibility and width of the access. Therefore, safe and suitable access to the site can be achieved for all users and the proposal would not be unacceptable without this condition. Therefore, it is unnecessary and can be deleted from the planning permission.

Character and appearance

11. Details of the boundary treatments were not submitted with the planning application and the LPA imposed condition 7, which requires their submission and subsequent approval, along with a timeframe for their installation.

12. The site is prominent, particularly when approaching from the north. The site has an existing stock proof fence to the north, but the appellant sets out that his intention is to build a dwarf wall faced with local stone, capped with artificial stone and then topped with railings. However, the construction timeframe of the wall would be determined by the availability of both materials and time. The LPA raises no objections to this proposal, but expresses concerns that an inappropriate boundary treatment could be erected if specific details were not agreed by condition. I agree. Therefore, the condition would be necessary to ensure that an appropriate boundary treatment is erected in the interest of the character and appearance of the area.

13. However, the imposed condition is not enforceable or precise, because it does not require the approved boundary treatment to be installed within any given timeframe. As a result, the condition should be varied. This will improve its precision and ensure that it would achieve what the LPA clearly intended, along with providing the appellant sufficient opportunity to install the fence in line with the approved timetable of implementation.

Living conditions

14. Condition 9 places restrictions upon the integral lower ground floor garage. The LPA accepts that the restriction for a separate residential use is not clear or precise and advises it could be struck from the permission. I agree, particularly as the creation of a separate residential unit would also require planning permission.

15. Furthermore, as industrial, commercial or business uses would be a different planning use to that of a residential dwelling, planning permission would be required to use the garage for these purposes. Therefore, the condition is not necessary to protect the living conditions of occupiers of neighbouring properties.

16. Consequently, the proposal would not be unacceptable without this condition, it is unnecessary and can be deleted from the planning permission.

Conclusion

17. For the reasons set out above, I conclude that the appeal should be allowed and the planning permission varied.

Katie McDonald

INSPECTOR