



Appeal Decision

Site visit made on 1 July 2019

by Tim Crouch DipUD MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 September 2019

Appeal Ref: APP/Y9507/W/19/3226195 180 Forest Road, Liss GU33 7BX

- 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 Alan Jones against the decision of South Downs National Park Authority.
 - The application Ref SDNP/18/06568/CND, dated 21 December 2018, was refused by notice dated 4 March 2019.
 - The application sought planning permission for retention of detached double garage with storage loft without complying with a condition attached to planning permission Ref 38505/005, dated 27 January 2010.
 - The condition in dispute is No 1 which states that:
The building hereby permitted shall be used only for the parking of private motor vehicles and ancillary domestic storage and for no other purpose. No part of the building shall be converted into habitable accommodation or used for any other use thereafter.
 - The reason given for the condition is:
In the interests of highway safety and the amenity of nearby residents.
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Decision

1. The appeal is allowed and planning permission is granted for retention of detached double garage with storage loft at 180 Forest Road, Liss GU33 7BX in accordance with application Ref SDNP/18/06568/CND, dated 21 December 2018, without compliance with condition number 1 previously imposed on planning permission Ref 38505/005, dated 27 January 2010, but subject to the following condition:
 - 1) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 180 Forest Road, Liss GU33 7BX.

Procedural Matter

2. The South Downs Local Plan was formally adopted by the South Downs National Park Authority on 2 July 2019. The main parties were given the opportunity make additional comments on the effect of this.

Main Issue

3. The main issue is whether the proposal would result in the building becoming a separate unit of accommodation and its effect on the Wealden Heaths Phase II Special Protection Area.

Background

4. The building is a detached double garage which has a planning condition preventing habitable use. The appellant seeks to use the building as accommodation ancillary to the main dwelling and has provided a suggested condition to be imposed, taken from the former Circular 11/95, Appendix A. The Council has stated that ancillary use is acceptable, but is concerned that a separate unit of accommodation could develop which would lead to an increase in occupancy and an associated effect on the Wealden Heaths Phase II Special Protection Area (SPA) through visitor pressure. It has provided an alternatively worded condition which is substantially the same but continues that the ancillary building "*shall not be let, sold separately, or severed thereafter.*"

Reasons

5. The appellant's proposed condition is taken from the former Circular. Whilst this has now been cancelled, the condition wording meets the tests as set out in paragraph 55 of the National Planning Policy Framework (2019) (the Framework). In particular, the condition is considered by the appellant to be enforceable, as if the building were to be functionally separated, or used as a separate unit of accommodation, this would be contrary to the wording as set out.
6. I have had regard to the Council's concern that if the building were let, or sold or severed from the main dwelling, it would not remain ancillary. However, if such circumstances arose, and the use is not ancillary to the main dwelling, it would be contrary to the condition. Similarly, I have had regard to Natural England's comments and whilst the building is physically separate from the main house, and there are no floorplans provided with the appeal to indicate exactly how the building may be used, any uses not ancillary to the main house would again be contrary to the wording of the condition.
7. Moreover, the appellant and the Council agree that the appellant's proposed wording would not allow the building to be let continuously or for limited periods. This would prevent Holiday Lets, or severing from the main dwelling, and therefore not give rise to additional pressure on the SPA.
8. Whilst I recognise that the Council sees the benefit of being clear to the appellant of what, in its view, 'is / isn't allowed', I am also aware that the National Planning Policy Guidance states that if a condition is wider in scope than is necessary to achieve the desired objective it will fail the test of necessity. Therefore, the additional wording, although used by the Council elsewhere, is not considered necessary in this case.
9. I have had regard to the Council's concern that the site is physically separate from the dwelling through a 2 metre closeboard fence and it has a separate access and amenity area, with no detail of the intended use provided with the application. However, the condition would require the building to be ancillary and is considered enforceable.
10. I am aware that the Council has an adopted Wealden Heaths Phase II Special Protection Area Supplementary Planning Document (2018) (SPD) which addresses other forms of residential development that result in a net increase in residential dwellings. However, the building would remain ancillary and therefore not result in a net gain in dwellings in this case.

11. Therefore, the proposal would not result in the building becoming a separate unit of accommodation and therefore not have a likely significant effect on the Wealden Heaths Phase II Special Protection Area. Consequently, it would not be contrary to policies Liss 5 and Liss 9 of the Liss Neighbourhood Plan (2017), policies CP22 and CP29 of the East Hampshire District Local Plan: Joint Core Strategy (2014) and policies SD5 and SD9 of the South Downs Local Plan (2019). Taken together, and amongst other objectives, these seek to prevent new units of accommodation which may have an effect on the SPA and which would have a poor standard of amenity. They also require development to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.

Conditions

12. The guidance in the Planning Practice Guidance 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. However, given that the development has been carried out I do not consider it necessary to include the condition relating to approved plans.
13. As set out in the Main Issue, I have included a condition restricting the use of the building as ancillary to the main dwelling. This is required to maintain planning control and prevent the use as a separate unit of accommodation.

Conclusion

14. For the reasons given above, I conclude that the appeal should be allowed subject to condition.

Tim Crouch

INSPECTOR