



Appeal Decision

Site visit made on 2 September 2019

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 October 2019

Appeal Ref: APP/A0665/W/19/3231569

New House Farm, Green Lane, Shocklach Oviatt, Malpas SY14 7BN

- 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 Hugh Butler & Clare Regnart against the decision of Cheshire West & Chester Council.
 - The application Ref 18/04642/FUL, dated 29 November 2018, was approved on 8 April 2019 and planning permission was granted subject to conditions.
 - The development permitted is demolition of existing outbuilding (with permission to be converted to residential annexe under consent ref 18/00392/FUL) and re-building on same footprint and to same size as existing.
 - The conditions in dispute are Nos 5 and 7 which state that:
 - (5) No part of the building hereby permitted shall be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as New House Farm or by family members of the occupants of New House Farm, and the building shall not contain more than one bedroom within it at any time.
 - (7) Prior to the first occupation of outbuilding hereby approved, a post and rail fence of a height of between 1m and 1.2m shall be erected around the approved extended residential curtilage defined by the redline on approved location plan drawing no.434/C/01 REV A, and thereafter maintained as such.
 - The reasons given for the conditions are:
 - (5) The establishment of an independent unit of accommodation would lead to an unsatisfactory relationship between independent dwellings, in accordance with Policy STRAT1, STRAT2 and SOC5 of the Cheshire West and Chester Council Local Plan (Part One), and the appropriateness of an additional independent unit of accommodation has not been demonstrated in relation to the relevant housing development policies.
 - (7) To define the domestic garden and for the purposes of visual amenities.
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Decision

1. The appeal is allowed and the planning permission Ref 18/04642/FUL for the demolition of existing outbuilding (with permission to be converted to residential annexe under consent ref 18/00392/FUL) and re-building on same footprint and to same size as existing at New House Farm, Green Lane, Shocklach Oviatt, Malpas SY14 7BN granted on 8 April 2019 by Cheshire West & Chester Council is varied by deleting condition No 7 and substituting condition No 5 for the following:
 - (5) No part of the building hereby permitted shall be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as New House Farm or by family members of the occupants of New House Farm.

Background and Main Issue

2. The Council previously granted planning permission for the conversion of an existing outbuilding to a residential annexe. The appellant subsequently applied for the demolition and rebuild of the outbuilding with the new outbuilding to be used for the same ancillary purpose. Planning permission was granted for the subsequent planning application and this included the disputed conditions set out above which are the subject of this appeal.
3. The main issues are whether conditions 5 and 7 are reasonable and necessary having regard to the location of the site and the relevant development plan policies.

Reasons

Condition 5

4. Condition 5 is similar to a condition attached to the original planning permission to convert the existing building in that it limits occupation of the building for purposes ancillary to, or by family members of the occupants of, New House Farm. The main difference is that the number of bedrooms within the outbuilding are limited to one on the latest planning permission, whereas the original planning permission did not include such a restriction.
5. The original planning permission for a conversion of the existing outbuilding established the size of an ancillary building that could be implemented on the site. The outbuilding approved under the planning permission subject of this appeal is the same size. Future internal arrangements in terms of the number of beds provided within the building would be difficult to monitor and enforce. Furthermore, provided the building is only utilised as ancillary to, or by family members of the occupiers of the main dwelling, the number of bedrooms should be immaterial as the relationship between the outbuilding and main dwelling would remain rather than any independent unit of accommodation being established.
6. I therefore conclude that the disputed part of condition 5 is not reasonable or necessary to prevent an independent dwelling being created which would need to comply with Policies STRAT1 (Sustainable Development), STRAT2 (Strategic development) and SOC5 (Health and well-being) of the Cheshire West and Chester Council Local Plan (Part One: Strategic Policies) (2015) which amongst other things support sustainable development principles, with a settlement hierarchy for the delivery of new dwellings and do not support development that would give rise to adverse impacts on residential amenity.
7. The appellant has requested that the wording for the similar condition on the original planning permission be used instead. Whilst the remaining undisputed text is essentially the same on both planning permissions, the original planning permission referred to '...the accommodation hereby permitted'. In the case of the planning application subject of this appeal, a new building was proposed. Accordingly, the wording of condition 5 of the latest planning permission is more precise as it refers to '...the building hereby permitted...'. I have therefore used the wording of the condition on the latest planning application but have amended it to remove the restriction on the number of bedrooms.

Condition 7

8. The original planning permission to convert the existing outbuilding did not include a condition requiring the erection of a post and rail fence to define the domestic garden. The Council's delegated report suggests that the new outbuilding would be located partly within the domestic curtilage and partly on agricultural land and therefore the proposal would lead to a change of use of a section of agricultural land to domestic use. In considering the planning application, the Council were of the view that a new build of the scale proposed outside of the defined residential curtilage and within countryside would not comply with the development plan. However, weight was attached to the fall-back position for the conversion of the existing outbuilding and use of land to residential curtilage already granted planning permission.
9. The site plan submitted with the planning application clearly denotes the application site as including the proposed outbuilding as well as the gravel drive and forecourt and garden serving New House Farm as constituting the land subject of the application. The land denoted by the red line does not extend to any excessive degree beyond the footprint of the proposed outbuilding. On this basis, the proposed curtilage associated with New House Farm including garden area and the associated outbuilding is already clear and could easily be measured using the approved site plan. Any use of the land beyond the red line site boundary for domestic purposes would require a separate planning permission. I have nothing before me which persuades me that a post and rail fence is necessary to denote the boundary shown or why this would have benefits for visual amenity.
10. On the basis of the above, I conclude that Condition 7 is not reasonable or necessary either to define the extent of domestic curtilage or for visual amenity purposes and it can therefore be deleted.

Conclusion

11. For the reasons given, I conclude that the appeal should succeed. I will vary the planning permission by amending condition 5 and deleting condition 7.

M Russell

INSPECTOR