



Appeal Decision

Site visit made on 11 December 2019

by T A Wheeler BSc (Hons) T&RP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/P2935/W/19/3237751

The Old Farm Byre, B6345 East Thirston Village, East Thirston NE65 9EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission partly under section 73 and partly under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr C Wade against the decision of Northumberland County Council.
- The application Ref 19/01348/VARYCO, dated 25 April 2019, was refused by notice dated 6th August 2019.
- The application sought planning permission for Construction of a detached dwelling with detached garage without complying with conditions attached to planning permission Ref 13/01837/FUL, dated 10 September 2013.
- The conditions in dispute are Nos 10, 11, 15 and 16 which state that:
(10) The dwelling hereby approved shall not be occupied until the existing vehicular access to the site has been constructed/resurfaced in accordance with Type 7 of Northumberland County Council standard specifications for a minimum of 10m, in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority. (11) Notwithstanding the provisions of the Town & Country Planning General Permitted Development Order 1995 (or any Order revoking or re-enacting that Order), no conversion of any garage to living accommodation shall take place without the prior permission of the Local Planning Authority. (15) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no extensions, porches, dormer windows, roof lights or free standing buildings or structures shall be added to or constructed within the curtilage of the unit hereby permitted without the prior grant of planning permission from the Local Planning Authority. (16) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no further openings of any kind shall be formed in the any elevation of the unit hereby permitted without the prior grant of planning permission from the Local Planning Authority.
- The reasons given for the conditions are:
(10) To achieve access to and from the site in a manner so as not cause significant danger and inconvenience to other road users. (11) To enable the Local Planning Authority to consider the effects of such a development. (15) In order that the impact on the appearance of the dwelling house and on neighbouring properties of any additions or curtilage buildings may be properly assessed in the interests of amenity (Policy H19 and 20 of Castle Morpeth District Wide Local Plan). (16) To safeguard the amenity of neighbouring residential properties (Policy H19 and 20 of Castle Morpeth District Wide Local Plan).

Decision

1. The appeal is allowed and planning permission is granted for Construction of a detached dwelling with detached garage at The Old Byre Farm, B6345, East Thirston Village, East Thirston NE65 9EJ in accordance with the application Ref 19/01348/VARYCO, made on the 25 April 2019 without complying with condition No 11 previously imposed on planning permission Ref:13/01837/FUL dated 10 September 2013 and subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr C Wade against Northumberland County Council. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. In 2011 planning permission was granted, Ref: 11/00468/FUL for a change of use of a builder's yard and conversion of two structures on the site into a single dwelling, together with an extension to the curtilage to provide a parking area, garage and landscaping. However, upon commencement of implementation of this scheme the extent of the rebuilding required was found to be beyond the scope of the permission. Consequently, a fresh application for a new dwelling was submitted and approved in 2013, Ref: 13/01837/FUL. It is the conditions attached to this permission that are the subject of this appeal.
4. The appeal relates to 4 conditions. The first of these, Condition 10, sought implementation of works prior to occupation of the development. However, even though the need for the works is contested, the dwelling has been occupied in breach of this condition. Consequently, this element of the appeal falls to be determined under Section 73a of the Town and Country Planning Act 1990 (the Act).
5. The other conditions in dispute, namely Nos 11,15 and 16, seek to restrict future alterations and additions to the approved development by removing permitted development rights. The appellant is seeking to delete these restrictions and therefore this part of the appeal falls to be determined under Section 73 of the Act.
6. The development has commenced and the dwelling has been occupied. At the time of my site visit work had not commenced on the garage.

Main issue

7. The main issue is whether or not the conditions are reasonable and necessary in order to:
 - provide safe and suitable access to the site;
 - protect the character and appearance of the area;
 - protect the living conditions of neighbours in relation to privacy.

Reasons

Condition 10 – provision of safe and suitable access

8. The Old Byre Farm is served by a single point of access from the B6345. It also serves The Carrick, 1 The Cottages and provides access to agricultural land to the rear of the appeal site. It previously served the workshop which the dwelling has now replaced. However, it is only wide enough to accommodate a single vehicle and is currently finished in hardcore. When granting planning permission for a new dwelling on the site the highway authority therefore sought improvements, particularly to the surface of this track in the interests of highway safety.
9. The approved drawings included in the planning permission provide a specification for the improvement of first 10m of the access including the application of a bitumen finish¹.
10. It is suggested that in the absence of the upgrading of the first section of the access, stones and other material can spill onto the roadway and footpath and pose a hazard to the safety of both pedestrians and motorists.
11. At the present time the access is of a poor standard and even though no accidents have been attributed to the spill of loose stones into the carriageway, there is some increased risk to highway and pedestrian safety. The approved plans for the property show the upgrading of the access for a distance of 10m but it is suggested that a distance of 5m surfaced in bitumen would be sufficient to ensure that problems of stone spill into the carriageway do not occur. In support of the point, it has been drawn to my attention that permission² was granted for a dwelling to the west of the access subject to a condition requiring the access to be consolidated and surfaced between the carriageway for a distance of 5m.
12. Provision of hard surfacing makes it less likely that stones and other loose material will be washed into the road, causing a potential hazard for drivers and other road users. Such material can also be harmful to the road surfacing, increasing maintenance costs. A hard surface would also make emerging from the access safer as the surface will provide a better grip for vehicles accelerating onto the main road. The absence of accidents specifically related to the presence of loose material is therefore not a factor of any significant weight in this case.
13. Some parties suggest that surfacing for a distance of 10m is required to prevent mud being carried onto the road from vehicles, including agricultural plant. The appellant argues that some of the farm vehicles using the lane will damage the surface and will deposit mud into the road regardless of the length that is surfaced.
14. The appellant stated that he was unable to carry out the access works since he did not control the land, although the red line boundary submitted with the application showed the access land as within his control. It is apparent that this is not now the case and the appellant has attempted to contact the landowner to establish what the legal obligations are. The Council has spoken with the landowner who confirms that the access works should be undertaken. My

¹ Drawing reference 315030 Proposed Site Layout Date June 2013

² Local Planning Authority reference CM/20060887 dated 8 December 2006

consideration of the matter is limited to the need for and reasonableness of the planning condition. Landownership, whilst not irrelevant to the test of reasonableness, is essentially a private matter to be resolved by the parties involved.

15. It has been suggested that the reference to a Council standard specification is confusing and in any event these standards have now changed. The condition requires the specification of the work to be agreed with the Council therefore the reference to the Council standard is not necessary.
16. Bringing the above together, the existing state of the access is poor and below a standard that would normally be expected to serve new residential development. The exact specification of the improvement works is something to be agreed with the Council when discharging the condition. I am not persuaded by the argument that it is essential that the access should be surfaced for a length of 10m, and it may be that 5m would suffice to prevent problems from stone spill onto the main highway. I have therefore amended the condition such that a scheme for the improvement of the access, including the length to be surfaced must be agreed with Council prior to the carrying out of the works.
17. I therefore conclude that the condition requiring improvement of the access is reasonable and necessary, subject to the amendments which I have made, in order to ensure provision of a safe and suitable access to the site. In the absence of specific development plan policy, it is required in order to comply with the Framework's requirements in that regard, set out in Paragraph 108(b). I address the need to vary the wording of the condition later in my decision.

Condition 15 – character and appearance

18. The principle of a residential development on the appeal site was accepted with the granting of planning permission for the conversion of pre-existing buildings. Permission for a new dwelling was only granted when it was found that it was not possible to implement the conversion as approved. New dwellings would normally be required to demonstrate exceptional circumstances, as set out in Policy H16 of the Castle Morpeth District Local Plan³ (CMDLP). As none of these applied to this case, the Council assessed the proposal for the new dwelling having regard to Policy H24, which sets out the requirements for replacement dwellings.
19. For a replacement dwelling to be acceptable a series of conditions must be met regarding the size, scale, mass, materials and architectural details of what is proposed. The policy also makes it clear that permitted development rights may be removed in order to protect the character and appearance of the area. The Framework is clear that planning conditions should be kept to a minimum. The Planning Practice Guidance (PPG) reinforces the point that in respect of the removal of permitted development rights, the condition should make clear exactly what rights have been withdrawn⁴.
20. It is therefore apparent that there are exceptional circumstances surrounding the planning history of this site. In addition, it is clear that the aim of the local plan policies is to restrict residential development in the countryside. Policy H24 also seeks to ensure that any new dwelling is sympathetic to its rural

³ Adopted 2003

⁴ Planning Practice Guidance Paragraph:017 Reference ID: 21a-017-20190723 revision date 23 July 2019

setting and not intrusive in the landscape. In these circumstances, it is reasonable for the Council to seek to control future alterations to the dwelling, including free standing structures with the curtilage of the property that could have an adverse effect on the character or appearance of the area, which generally comprises attractive dwellings reflecting the Northumberland estate vernacular, and a number of listed buildings.

21. The reason for the condition refers to saved Policies 19 and 20 of the CDMLP. I have not been provided with these policies but it is suggested they apply only to the conversion of rural buildings. Since the property is not a conversion these policies are not of direct relevance.
22. I therefore conclude that the Condition 15 is reasonable and necessary in order to protect the character and appearance of the host property and the surrounding countryside. The Council refers generally to the CMDLP and Framework in its reasons although its statement makes clear that it principally relies on Policy H24 as supporting the need for the condition. Insofar as the policy is relevant to the development my decision accords with that policy and also with the Framework which seeks to achieve high quality buildings and places and keep planning conditions to a minimum and impose them only when necessary.

Condition 16 – living conditions of neighbours

23. The rear elevation of The Byre and The Carrick face towards each other at a distance of approximately 20m. There is potential for overlooking between habitable room windows and one proposed window at first floor in the appeal property was removed and replaced with roof lights as part of the planning permission⁵. The control of any future windows in this elevation is required to ensure privacy between the 2 dwellings. However, there is no need to restrict the forming of openings in any other elevations of the property as it is only in relation to The Carrick that any future risk to privacy exists.
24. The reason for the condition also refers to saved Policies 19 and 20 of the CDMLP. For the same reason as that given in relation to condition no 15, the policies are not of direct relevance.
25. I therefore conclude that the Condition 16 is reasonable and necessary in order to control the insertion of further windows under permitted development, but only in respect of the southern elevation facing The Carrick. As with Condition 15, the Council principally relies on Policy H24 as supporting the need for the condition and my decision accords with that policy and also with the Framework which seeks to protect the living conditions of existing and future users where development occurs.

Condition 11 – use of the garage

26. The appellant seeks the deletion of Condition 11 which controls the future conversion of any garage to living accommodation. However, in any event condition no 7 of the extant permission restricts the use of the garage specifically to that of parking a vehicle. Nothing in the General Permitted Development Order⁶ (the GDPO) permits any development contrary to any

⁵ Condition 17 relates to this window.

⁶ The Town and Country Planning (General Permitted Development) Order 2015

condition imposed on a planning permission. Consequently, any change of use of the garage could only be granted by an application for planning permission to the local planning authority in the first instance.

27. In these circumstances a condition removing permitted development rights to convert the garage into living accommodation is unnecessary. I will therefore delete this condition.
28. I therefore conclude that condition 11 does not satisfy the test of necessity and reasonableness. Due to condition 7, the removal of the condition does not conflict with Policy H24 of the CMDLP insofar as it applies to the application, which supports the removal of permitted development rights where it is necessary in the interests of visual amenity. The removal of the condition is in accordance with the Framework, which seeks and keep planning conditions to a minimum and impose them only when necessary.

Other Matters

29. The appellant has referred me to another appeal decision⁷ where an Inspector concluded that permitted development should only be removed in exceptional circumstances. A copy of the decision has not been provided, and in any event without knowing the full circumstances of the other case it would be difficult to make direct comparisons between the appeals. The general point that such planning conditions should only be used where there is a strong justification is not disputed, and the Planning Practice Guidance makes clear that such conditions may not pass the test of reasonableness or necessity⁸. For the reasons given, in this case the tests are met.
30. A garage within The Carrick is subject to a planning condition requiring the approval of a proposal to use that building for residential purposes. Whilst this is noted it has no bearing on my findings in respect of the merits of Condition no 11. I am also aware that The Carrick itself is not subject to a planning condition removing the same permitted development rights as the property, nor is a consented dwelling to the west of East Thirston Farm. Whilst it has been suggested that there is some inconsistency in the Council's the use of such planning conditions, this is not a reason why I should allow the appeal in respect of conditions 15 and 16 if they satisfy the Framework tests.

Conditions

31. The guidance in the PPG 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, unless they have already been discharged.
32. Because conditions 6, 8, 9 and 10 attached to the existing planning permission were to be discharged prior the commencement of development or prior to occupation, I have sought the views of the main parties on form that these conditions should take in the new consent, in order that they comply with the Framework tests. The approach I have taken in the conditions is that the outstanding works required under the new planning permission are to be undertaken within 6 months of the date of this decision, which I consider to be a reasonable period given the advanced state of the development.

⁷ Appeal reference APP/J3720/W/18/3217169

⁸ Planning Practice Guidance paragraph :017 Reference ID: 21a-017-20190723

33. However, I have not received a response from either the Council or appellant on these conditions and have therefore proceeded on the basis that they have no comments.
34. For the avoidance of doubt I retain the condition requiring the development to be carried out in accordance with the approved plans, which are listed, amended to make clear that in respect of the improvement of the access details are to be agreed with the Council.
35. I retain a condition requiring any damage to the highway arising from the construction of the dwelling to be made good, in the interest of the appearance of the area and highway safety.
36. In the interests of highway safety, conditions are retained requiring the areas allocated for parking, garaging and the turning of vehicles to be provided and maintained for the lifetime of the development. In accordance with my decision to delete condition 11 the requirement under these conditions that the garage must only be used for the parking of vehicles is retained.
37. A condition is attached requiring the improvement of the access for the reasons given elsewhere in the decision. The requirement that these works be completed prior to the occupation of the dwelling is replaced with the provision that details of the improvement works shall be submitted to the Council within 2 months of the date of this decision, and following those details being agreed shall be completed with 4 months of that approval. The former reference to Type 7 of Northumberland County Council standard specifications is deleted for the reasons given.
38. For reasons described elsewhere in my decision I attach 2 conditions requiring the future approval of a range of works which would otherwise constitute permitted development. In the case of new condition 9, the condition is required in the interests of the character and appearance of the area; and in the case of new condition 10, in the interest of protecting the living conditions of the occupiers of the dwelling to the south of the property. In respect of Condition 10 the words 'in the any elevation of the unit' used in the former condition are replaced with 'in the south facing elevation of the dwelling'. Both conditions include clarification of those parts of the GDPO for which permitted development rights are removed.
39. A condition is retained requiring details of all boundary treatments to be approved and implemented, despite such works normally constituting permitted development, in the interests of the character and appearance of the area. Some walls have already been erected and I require only that any further fences or walls are to be subject to approval and that they be completed within 4 months of such approval.
40. Condition 17 of the existing permission relates to the use of obscured glazing in a small window within the sitting area, which was deleted from the proposal and replaced with rooflights under a Non Material Amendment⁹. I therefore delete that condition as it is not necessary.

⁹ Local Planning Authority reference: 13/03257/NONMAT

Conclusion

41. For the reasons given the appeal is allowed. Condition 10 is deleted and varied and requires that a scheme for the improvement of the access is submitted to the Council within 2 months of the date of this decision and implemented within a further 4 months of the date of the decision. Condition 11 is deleted and Conditions 15 and 16 deleted and varied as set out in the schedule.

Tim Wheeler

INSPECTOR

Schedule of Conditions

- 1 With the exception of the Access Road Detail, the development hereby permitted shall not be carried out otherwise than in complete accordance with the approved plans

The approved plans for this development are:-

315-01

315-02

315-30

315-25

315-20A

315-21C

315-22A

315-23A

- 2 Unless within 6 months of the date of this decision any damage to the highway caused by construction/operative traffic associated with the works within the development site have been made good, with damaged areas repaired and footways resurfaced, in accordance with a scheme which shall first have been submitted to and approved in writing by the Local Planning Authority, the occupation approved dwelling shall cease and the occupation of the dwelling shall not resume until such time as any necessary repairs have been completed.
- 3 The area allocated for parking and the garage on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- 4 Unless within 6 months of the date of this decision a minimum of 4 parking spaces have been provided within the curtilage of the site the occupation approved dwelling shall cease and the occupation of the dwelling shall not resume until such time as the parking spaces have been provided. The approved parking area shall be maintained during the lifetime of the development.
- 5 Unless within 2 months of the date of this decision a scheme for the provision of a turning area within the site is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 4 months of the Local Planning Authority's approval, the occupation of the approved dwelling shall cease and shall not resume until such time as a scheme is approved and implemented
- 6 Unless within 2 months of the date of this decision a scheme for the improvement of the vehicular access to the site, including the length to be hard surfaced, is submitted in writing to the Local Planning Authority for approval, and unless the approved scheme is implemented within 4 months of the Local Planning Authority's approval, the occupation approved dwelling

shall cease and shall not resume until such time as a scheme is approved and implemented.

- 7 Unless within 2 months of the date of this decision a scheme the disposal of foul and surface water drainage has been submitted to and approved in writing by the Local Planning Authority, and unless the approved scheme is implemented within 4 months of the Local Planning Authority's approval, the occupation of the approved dwelling shall cease and shall not resume until such time as a scheme is approved and implemented
- 8 Notwithstanding the provisions of the Classes A, B, C, D and E, Part 1, Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, porches, dormer windows, roof lights or free standing buildings or structures shall be added to or constructed within the curtilage of the unit hereby permitted without the prior grant of planning permission from the Local Planning Authority.
- 9 Notwithstanding the provisions Class A, Part 1, Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further openings of any kind shall be formed in the south facing elevation of the dwelling hereby permitted without the prior grant of planning permission from the Local Planning Authority.
- 10 Notwithstanding the provisions of the Class A, Part 2, Schedule 2 of the Town & Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no means of boundary treatment, enclosures, screening, walls fences and any gates shall be erected until details of those works have been submitted to and approved in writing by the Local Planning Authority. All approved means of enclosure shall be erected, constructed or completed within 4 months of the local planning authority's approval of these details.

ENDS