
Appeal Decision

Site visit made on 17 December 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th May 2020

Appeal Ref: APP/M9496/W/19/3238015

Land Formally Bleaklow Farm, Bramley Lane, Hassop, DE45 1NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 P Hunt, C/o Coverland Uk Ltd, against Peak District National Park Authority.
 - The application Ref NP/DDD/0519/0460 is dated 3 May 2019.
 - The application sought planning permission for: variation or removal of condition 1 on approved application Ref NP/DDD/1117/1128 - removal or variation of condition 2 on NP/DDD/1116/1095 (demolition of farmhouse and erection of replacement dwellinghouse; demolition and rebuilding of stables to form additional living accommodation; erection of stables buildings and garage), without complying with a condition attached to planning permission Ref NP/DDD/1117/1128, dated 21 December 2017.
 - The condition in dispute is No 1, which states that: the development permitted shall be carried out in complete accordance with the amended, approved plans Ref: IDS/PH/16/037 07, IDS/PH/16/037 08, IDS/PH/16/037 09, P-E202 Proposal Elevations and IDS/PH/14/041 25B.
 - The reason given for the condition is: for clarity and the avoidance of doubt.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr P Hunt, Coverland Uk Ltd, against the Peak District National Park Authority. This application is the subject of a separate Decision.

Background and Procedural Matters

3. As noted in the header above, application Ref NP/DDD/1116/1095 gave planning permission for "demolition of farmhouse and erection of replacement dwellinghouse; demolition and rebuilding of stables to form additional living accommodation; erection of stable buildings and garaging."
4. Application Ref NP/DDD/1117/1128 subsequently gave permission to vary condition 2, which specified the approved plans, on approved application Ref NP/DDD/1116/1095. During my site visit I observed that permission Ref NP/DDD/1117/1128 has been substantially implemented. I have dealt with the appeal on this basis.

5. The appellant sought to vary condition No 1 on approved application NP/DDD/1117/1128 by replacing the approved plans with amended plans. In summary, as agreed between the parties during the application, the amendments primarily seek to use the approved stables and tack room as ancillary domestic accommodation associated with the approved replacement dwellinghouse.
6. The details of condition 1 on approved application Ref NP/DDD/1117/1128 and the reasons for it being attached are provided above.
7. Appeal APP/M9496/W/19/3238013 has been submitted simultaneously with this one. Although the 2 appeals fall within the site to which approved application Ref NP/DDD/1117/1128 relates, the 2 appeals relate to 2 distinct buildings within the site and the proposals have been submitted with different site boundaries. I have dealt with each of the appeals on their respective merits, though I have had regard to the cumulative effect of both in each case.
8. I note that I have been made aware that the appellant has, subsequent to the submission of the appeal being dealt with here and appeal APP/M9496/W/19/3238013, submitted a further application, Ref NP/DDD/1119/1179, which seeks to retain an area that has been used for parking during the construction phase, for parking to be associated with the development of the wider site. As the details of the application did not form part of the current proposal, I consider relevant parties would be prejudiced if such information was considered as part of the current appeal. I have therefore made my decision based on the proposal as submitted to the Authority.

Reasons

9. A s73 application can be used to seek a 'minor material amendment', where there is a relevant condition that can be varied.¹ There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.²
10. The proposal would change the use of the approved stables/tack room to 4 additional bedrooms and other associated domestic facilities. The access to the site would remain as approved under application Ref NP/DDD/1117/1128, ie the access point and track south-east of the site.
11. Recent case law³ has found that a decision-taker does not have the power to grant planning permission, via a s73 application, for development that was not covered by the original description of development. Thus, should the appeal be allowed, not only would conditions be varied or removed, which s73 allows for, but the permission would be for something that was not covered by the original description of development, ie ancillary accommodation, rather than stable buildings. Although I acknowledge that the external appearance of the building would not be significantly altered, I consider the proposed ancillary accommodation, in terms of use, to be fundamentally different to the approved stable buildings. As such, I conclude that the proposal would go beyond the parameters of a 'minor material amendment'.

¹ Planning Practice Guidance - Paragraph: 013 Reference ID: 17a-013-20140306.

² Planning Practice Guidance - Paragraph: 017 Reference ID: 17a-017-20140306.

³ *John Leslie Finney v Welsh Ministers, Carmarthenshire County Council and Energiekontor UK Limited* [2019] EWCA Civ 1868.

Conclusion

12. For the reasons outlined above, I conclude that the appeal is dismissed.

J Williamson
INSPECTOR