



Appeal Decision

Site visit made on 2 June 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 July 2020

Appeal A Ref: APP/D1265/W/19/3243507

Misty Meadows (Unit 3), 147 Ringwood Road, Ferndown, Dorset BH22 9AB

- 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 Tony Philips against the decision of Dorset Council.
- The application Ref 3/19/0985/FUL, dated 15 April 2019, was approved on 4 December 2019 and planning permission was granted subject to conditions.
- The development permitted is a proposed single storey extension to Unit 3 to form bedroom and en-suite.
- The condition in dispute is No 4 which states that: the detached annexe accommodation shown on the plans shall be used solely for residential purposes ancillary to dwelling 3 and shall not be used at any time as a separate unit of living accommodation.
- The reason given for the condition is: in the interests of protecting local character, neighbouring amenity and to avoid significant impacts on internationally protected Dorset Heathland.

Appeal B Ref: APP/D1265/W/19/3246404

Misty Meadows (Unit 3), 147 Ringwood Road, Ferndown, Dorset BH22 9AB

- 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 Mrs Vicky Philips against the decision of Dorset Council.
- The application Ref 3/19/1013/FUL, dated 15 April 2019, was approved on 20 January 2020 and planning permission was granted subject to conditions.
- The development permitted is to form covered walkway from Unit 3 to annexe and to provide conservatory to annexe.
- The conditions in dispute are Nos 5 and 6 state that:
Condition 5 - Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any subsequent re-enactment thereof no further additions to the dwelling shall be constructed without express planning permission first being obtained.
Condition 6 - The annexe accommodation shall be used solely for residential purposes ancillary to Unit 3 of Misty Meadow and shall not be used at any time as a separate unit of living accommodation.
- The reasons given for the conditions are:
Condition 5 - To protect the amenity of occupants of the adjoining property bearing in mind the close proximity of the dwelling on Unit 3 to the northern side boundary.
Condition 6 - Bearing in mind the planning history of the site, its proximity to protected Dorset heathland, and the restricted space available for parking provision within the curtilage of the site given that land to the west of the curtilage to Unit 3 lies within the Green Belt.

Decisions

1. Appeal A is allowed and the planning permission Ref 3/19/0985/FUL for a proposed single storey extension to Unit 3 to form bedroom and en-suite at Misty Meadows (Unit 3), 147 Ringwood Road, Ferndown, Dorset BH22 9AB

granted on 4 December 2019 by Dorset Council, is varied by deleting condition 4.

2. Appeal B is allowed and the planning permission Ref 3/19/1013/FUL to form covered walkway from Unit 3 to annexe and to provide conservatory to annexe at Misty Meadows (Unit 3), 147 Ringwood Road, Ferndown, Dorset BH22 9AB granted on 20 January 2020 by Dorset Council, is varied by deleting conditions 5 and 6.

Background

3. The wider site has a long and detailed planning history including appeal decisions. I have taken this history into account where relevant. In particular, planning permission has been granted with conditions in March 2019¹ for the subdivision of the original dwelling on the site to three dwellings. There was an appeal² against two conditions attached to this permission. This appeal was successful in relation to the condition which removed permitted development rights for extensions to the units and this condition was deleted. However, the condition restricting the use of an outbuilding to an annexe to Unit 3 was considered reasonable and necessary and the appeal in respect of that condition was dismissed.
4. Unit 3 is the northern most dwelling of the 3 units on the site. Adjoining the dwelling is the detached annexe. Planning permission was granted for a side extension to Unit 3 under Application 3/19/0985/FUL and a condition with this approval requires that the annexe be used solely for residential purposes to dwelling 3 and not a separate unit of living accommodation. A subsequent planning permission was granted under Application 3/19/1013/FUL for a structure to link Unit 3 to the annexe. Again, this approval was subject to a condition which requires the annexe to be used solely for residential purposes to Unit 3 and not a separate unit of living accommodation. The appellant seeks the removal of both of these conditions.
5. Furthermore, the permission under Application 3/19/1013/FUL includes a condition removing permitted development rights for additions to the dwelling and again the appellant seeks the removal of this condition. The Council has subsequently agreed at the appeal stage that this condition did not meet the test of necessity and it does not wish to defend the removal of that condition. I will return to this matter later.
6. Informatives were attached to both decision notices. The informative attached to Application 3/19/0985/FUL advised the applicant that the structure labelled "shed" was not approved and was outside the application site. With Application 3/19/1013/FUL the informative advised that the annexe should only be occupied as ancillary to the main dwelling and not be used as a separate dwelling house, this matter being controlled by condition 5 of planning permission 3/18/2235/FUL.
7. The appellant also seeks the removal of the informatives attached to these respective permissions. The Planning Practice Guidance (the Guidance) explains that informative notes allow the local planning authority to draw an applicant's attention to other relevant matters and do not carry any legal weight³. There is

¹ Council ref 3/18/2235/FUL

² APP/U1240/W/19/3226887 dated 21 October 2019

³ Paragraph: 026 Reference ID: 21a-026-20140306

no mechanism before me to delete the informatives and therefore I cannot consider this request any further as part of these appeals.

8. I am also considering the appeal⁴ in respect of the building adjoining the annexe. As that appeal raises different issues, it is the subject of a separate decision.

Main Issues

9. The main issue in respect of Appeals A and B is whether the condition attached to the planning permissions requiring the annexe accommodation to be used solely ancillary to Unit 3 is reasonable, necessary and relevant to the development to be permitted.
10. Additionally, in relation to Appeal B, another main issue is whether the condition removing permitted development rights for additions is reasonable and necessary.

Reasons

Annexe Condition

11. The original condition (5) requiring the annexe to be used as ancillary accommodation to Unit 3 was attached to planning permission 3/18/2235/FUL. The condition was considered in detail in the appeal decision in October 2019. That Inspector was satisfied that the condition requiring the annexe to be restricted by condition to ancillary accommodation was reasonable and necessary for planning reasons. However, it does not follow that the restriction should be included as part of another planning approval unless the inclusion of such a condition would meet all the tests for planning conditions set out in the National Planning Policy Framework (the Framework).
12. In relation to Appeal A, the proposal is for a side extension to Unit 3. The extension would not be physically attached to the annexe and the extension should have little or no effect on how the annexe could be used. In relation to Appeal B, the extension would link the dwelling to the annexe and, in all likelihood, the overall living space would be more likely to operate as a single unit of accommodation than without the link. The schemes under both appeals do not directly alter the existing annexe structure itself, as they concern extensions, and they would not alter the enforceability of the earlier condition concerning the use of the annexe.
13. In these circumstances, the conditions attached to the respective planning permissions the subject of the present appeals, which restrict the use of the outbuilding to an annexe, are not directly related to the development to be permitted. As a result, the inclusion of such a condition to either permission is not necessary or reasonable. In this way, the conditions the subject of the appeal do not meet the tests in the Guidance and the Framework.
14. In the light of the above analysis, I conclude that the condition attached to both planning permissions requiring the annexe accommodation to be used solely ancillary to Unit 3 is not reasonable, necessary or relevant to the development to be permitted. It follows that the conditions should be deleted.

⁴ APP/D1265/W/20/3245921

In such a case, the use of the annexe would continue to be controlled by condition 5 of planning permission 3/18/2235/FUL.

Permitted development rights

15. Condition 5 of planning permission 3/19/1013/FUL seeks to remove the ability to add “additions” to the dwelling without an application for planning permission. The Council have accepted at the appeal stage that this condition is not necessary to make the development acceptable. Having regard to the findings of the earlier Inspector when he considered this matter, the advice regarding the removal of permitted development rights in the Guidance and the circumstances of this site, I agree. The condition does not meet the tests of reasonableness and necessity in this case.
16. Accordingly, I conclude that condition 5 of planning permission 3/19/1013/FUL does not meet with the tests for conditions because it is not reasonable and necessary and therefore it should be deleted from the approval.

Conclusion

17. For the above reasons, and having regard to all other matters, I conclude that the appeals should succeed. I will therefore delete condition 4 of planning permission 3/19/0985/FUL and conditions 5 and 6 of planning permission 3/19/1013/FUL.

David Wyborn

INSPECTOR