



Appeal Decision

Site visit made on 6 July 2020

by Philip Lewis BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2020

Appeal Ref: APP/E0915/W/20/3247551

Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission 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 Dr Jennifer Deeble against the decision of Carlisle City Council.
 - The application Ref 19/0540, dated 8 July 2019, was refused by notice dated 30 August 2019.
 - The application sought planning permission for the erection of replacement dwelling (revised application) without complying with a condition attached to planning permission Ref 17/0857 (APP/E0915/W/18/3201371), dated 11 April 2019.
 - The condition in dispute is No 4 which states that: Within 3 months from the date of this permission, the existing accesses to the highway shown on the Block Plan As Existing Drawing no. 3001/2 serving the property formerly known as Farndale, shall be permanently closed and the highway crossings and boundaries shall be reinstated in accordance with details have been submitted to and approved in writing by the local planning authority.
 - The reason given for the condition is to re-enforce the impression of Farndale being ancillary to Pennine View and from that single point of access, access to both buildings would be both clear, convenient and logical.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of replacement dwelling (revised application) at Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ in accordance with the application Ref 19/0540 made on 8 July 2019 without complying with condition No 4 set out in planning permission Ref 17/0857 (APP/E0915/W/18/3201371) granted on 11 April 2019, but otherwise subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Carlisle City Council against Dr Jennifer Deeble. This application is the subject of a separate Decision.

Background and Main Issue

3. Pennine View is a detached dwelling which was permitted as a replacement dwelling for a bungalow known as 'Farndale', which was to be demolished. The original planning permission¹ set out that the existing access for Farndale should be closed permanently and the boundaries reinstated. This matter was

¹ Council reference 13/0916

subsequently considered in a Planning Appeal² which sought development of the land without complying with that requirement along with another planning condition. That appeal was dismissed.

4. Farndale has since been permitted to be retained on the basis that it is occupied solely as ancillary accommodation to Pennine View³. Condition 4 of that permission, which is in dispute in this appeal, requires the access to be closed permanently and the boundary to be reinstated. The reasoning given in the decision is to re-enforce the impression of Farndale being ancillary to Pennine View, with a single point of access to both buildings being clear, convenient and logical.
5. Therefore, the main issue for the appeal is whether the condition is necessary, having regard to development plan policies relating to housing in the countryside and the living conditions of the occupiers of the Farndale annex with regard to accessibility.

Reasons

Is the disputed condition necessary?

Housing in the countryside

6. Policy HO2 (Windfall Housing Development) of the Carlisle District Local Plan 2015-2030 (CDLP) sets out where new housing development would be acceptable. In the rural area that means within or adjacent to villages. CDLP Policy HO6 (Other Housing in the Open Countryside) sets out the special circumstances where new housing will be allowed in the countryside, including replacement dwellings. Pennine View was allowed in the countryside as a replacement dwelling. The supporting text to Policy HO6 is clear that in terms of replacement dwellings, the existing house on the site must be demolished on completion of the new dwelling. In this case, Farndale has been retained solely as an annex to Pennine View and in planning terms is no longer permitted as an independent dwelling.
7. The existing access, subject to the disputed condition, provides a separate and independent access to the Farndale annex and to a detached garage. I saw at my site visit that retention of the access erodes the appearance of Farndale as an annex to Pennine View and gives the appearance of it being a separate dwelling when viewed from Sandy Lane. This is despite similarities in the external finishes of Pennine View and the Farndale annex. Whilst condition 3 of the permission sets out that Farndale should not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Pennine View' and shall not be sold separately or occupied as a separate dwelling, the retention of the access sought undermines the purpose and reason for that condition. This is because it facilitates independent access and occupation of the Farndale annex, the retention of which as an independent dwelling would be contrary to the CDLP, given that Pennine View has been permitted as a replacement dwelling. The retention of the access would therefore be contrary to CLP Policies HO2 and HO6 and a condition is necessary to secure the removal of the access to the Farndale annex.

² APP/E0915/W/16/3160411 Council reference 16/0196

³ APP/E0915/W/18/3201371 Council ref 17/0857

Living conditions

8. I saw at my site visit that land to the front of Pennine View is largely surfaced in unbound gravel, with areas of paving near to both Pennine View and Farndale. I have had regard to the health considerations put forward by the appellant and agree that the gravel surface may affect accessibility to Farndale from the Pennine View parking area for people with mobility problems. However, that matter could be readily addressed through a change in surfacing materials which would provide appropriate access for the long term, including use of a buggy and allow for any such future changes in health of occupiers of the annex. Whilst compliance with the condition would involve some further expense, this has been a consistent requirement of the development of Pennine View as a replacement dwelling.
9. Although the closure of the access would effectively prevent vehicular access to the retained garage for Farndale as presently configured, a large garage has been erected with Pennine View and the gravel parking area provides for parking for a number of vehicles, where electric car charging could be facilitated. The use of these facilities in a shared way would accord with the ancillary use of Farndale.
10. The appellant has referred to paragraphs 59 and 61 of the National Planning Policy Framework in respect of meeting the housing needs of different groups and the Planning Practice Guidance regarding housing for older and disabled people. I am satisfied that the removal of the access does not conflict with this national policy and guidance, as appropriate vehicular and pedestrian access can be provided for all users within the site utilising the Pennine View access.
11. The disputed condition would not have an unacceptable effect on the living conditions of the occupiers of Farndale and this matter does not persuade me that the condition is unnecessary.
12. To conclude on this matter, I find that the retention of the access would be contrary to CDLP Policies HO2 and HO6. A planning condition to secure the permanent closure and reinstatement of the existing access to Farndale is therefore necessary.

Other matters

13. Sandy Lane is a single track road and I have had regard to the comments from the Highway Authority that the retention of the access would not be prejudicial to highway safety. Whilst the retention of the entrance may provide some benefit as a passing place, I consider that this would be of limited benefit given the nature of the road.
14. In the Council Officers Report there is discussion of whether an access could be formed to the Farndale annex in the future as a fallback position. However, I have not been provided with details of such a scheme to consider. Consequently, the question of whether there is a potential fallback position is one which does not change my decision.

Conclusion and conditions

15. For the reasons set out above, I find that a condition to secure the closure of the existing access to the Farndale annex and the reinstatement of the boundary is necessary. However, given that the disputed condition required

the access to be closed within 3 months of the date of the permission and the works have not been carried out, that condition has been breached.

16. Consequently, I am allowing the appeal and issuing a new permission with a modified condition 4. The Parties were given the opportunity to comment on the wording for the modified condition and I have had regard to the response received in reaching my decision. The modified condition 4 is imposed to ensure that a scheme for closing the existing access is submitted, approved and implemented in full so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively-worded condition to secure the approval and implementation of the closure of the access before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met.
17. 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. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose them all. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have imposed a plans condition for certainty, a condition to removed permitted development rights to ensure that Farndale remains ancillary to Pennine View, a condition to ensure that Farndale is not occupied or sold as a separate dwelling from Pennine View to prevent the creation of a new dwelling in the countryside, and a condition in respect of the provision of visibility spays in the interests of highway safety.

Philip Lewis

INSPECTOR

Schedule of conditions

- 1) The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
 1. the Planning Application Form received 4th October 2017;
 2. the Planning Statement received 4th October 2017;
 3. the Planning Statement Appendix received 4th October 2017;
 4. the Notice of Decision;
 5. And the following plans : Drawing no. 3001/1; Drawing no. 3001/2; Drawing no. 3001/2C; Drawing no. 3001/4; Drawing no. 3001/5; Drawing no. 3001/6; the Supportive Statement received 20th November 2013; the Stage One Desk Top Study Assessment of Likelihood Of Contamination Of Proposed Development received 20th November 2013; the Hedge Survey Schedule received 20th November 2013.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) there shall be no enlargement or external alterations to the dwelling unit to be erected in accordance with this permission, within the meaning of Schedule 2 Part (1) of these Orders, without the written approval of the Local Planning Authority.
- 3) The bungalow known as 'Farndale' shall cease its independent residential use and shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Pennine View' and shall not be sold separately or occupied as a separate dwelling.
- 4) Unless within 2 months of the date of this decision a scheme for the permanent closure of the existing access to the highway shown on the Block Plan Drawing no. 3001/2D serving the Farndale Annex and for the reinstatement of the highway crossing and boundary is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented and completed within 3 months of the local planning authority's approval, the occupation of the Farndale Annex shall cease until such time as a scheme is approved and implemented in full.

Upon completion of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 5) Visibility splays providing clear visibility of 2 metres by 45 metres measured down the centre of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway in both directions. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of

any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.
