
Appeal Decision

Site visit made on 14 October 2020

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2020

Appeal Ref: APP/R2330/W/20/3255413

Red Walls Barn, Broadfield, Oswaldtwistle BB5 3SA

- 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 Khan against Hyndburn Borough Council.
 - The application Ref PP-08649506 is dated 13 April 2020.
 - The application sought planning permission for Change of use of barn to dwelling, including alterations to make habitable and erection of single storey extension without complying with a condition attached to planning permission Ref 11/15/0368, dated 8 December 2015.
 - The condition in dispute is No. 2 which states that: The development shall be carried out in accordance with the following documents: (a) The planning application form dated 07/10/2015. (b) Submitted Proposed Site Plan and Proposed Floor Plans and Elevations received on 14/10/2015.
 - The reason given for the condition is: For the avoidance of doubt and to enable Hyndburn Borough Council to adequately control the development and to minimise its impact on the amenities of the local area and to conform with Policies Env6 & Env7 of the Hyndburn Core Strategy.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Mohammed A Khan against Hyndburn Borough Council. This application is the subject of a separate Decision.

Procedural Matter

3. As no application number was given, I have taken the reference number from that provided via the Planning Portal when the application was submitted.

Preliminary Matters

4. The appellant sought consent under section 73 of the Town and Country Planning Act 1990 to vary the condition of the planning permission that listed the approved plans, in order to allow for an amendment to be made to the development. The appellant considers this to be a 'minor material amendment'.

5. The Council did not validate the application as they considered that there was not an extant planning permission when the application was made, and that the amendment that is sought falls outside what may be reasonably considered to be a 'minor material amendment' to the planning permission.
6. The confines of this appeal do not allow me to provide any legal basis to confirm, or otherwise, that the planning permission is extant or that the development has lawfully commenced. Such a dispute requires legal scrutiny and, if necessary, planning enforcement action.
7. From the evidence before me I am not persuaded that the matter of whether there is an extant planning permission prevents me from considering the appeal. In any event, were the appeal to be allowed, the expiry date of the new consent would be as the original permission.

Main Issue

8. The main issue is whether the proposed development that would occur as a result of varying the condition listing the approved plans, falls within the scope of what may be reasonably considered as a 'minor material amendment'.

Reasons

9. The appeal property is a disused barn that was granted planning permission to be converted to a single dwelling, including alteration and the erection of a single storey extension.
10. The amendment that is sought comprises the addition of two dormer windows. The Council also refer to an increase in height of the roof, increase in volume of the extension and its roof design, and changes to the location of windows and doors. Central to the appeal is whether such alterations would constitute a 'minor material amendment'.
11. 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.
12. The original planning permission was to convert a disused barn to a dwelling and included a single storey extension. Due to its size and scale when compared to the size and scale of the consented development, I consider that it would result in a substantially different form of development from the one which has been approved. It would result in a fundamental change to the appearance of the dwelling beyond that which was initially considered.
13. The appellant has referred to the judgement in R (Vue Entertainment Limited) v City of York Council in support of why they consider the proposal would constitute a minor material amendment. I do not have full details of the development or the judgement. In any event, it is clear from the summary provided by the appellant, that it related to a development of a significantly different nature to that before me. I have also considered the appeal on its own individual planning merits.

Conclusion

14. For the reasons outlined above, I consider that the proposed development that would occur as a result of varying the condition listing the approved plans,

does not fall within the scope of what may be reasonably considered as a 'minor material amendment'. Accordingly, the appeal under this procedure, is dismissed.

A M Nilsson

INSPECTOR