The Planning Inspectorate

Appeal Decision

Site visit made on 15 December 2020

by Martin Small BA(Hons) BPl DipCM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2020

Appeal Ref: APP/L3815/W/20/3254498
101A First Avenue, Almodington, Earnley, PO20 7LQ

- 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 B Kirk against the decision of Chichester District Council.
- The application Ref E/20/00967/FUL, dated 12 April 2020, was approved on 16 June 2020 and planning permission was granted subject to conditions.
- The development permitted is proposed cladding to walls and roof of existing Horticultural building (greenhouse) and additional internal works.
- The condition in dispute is No 4 which states that: "*Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, and the Town and Country Planning (General Permitted Development) Order 2015, or any other statutory instrument amending, revoking and re-enacting these Orders, the building hereby permitted shall be only used for incidental purposes to the horticultural use of the site and for the storage and packing of produce and materials produced on the site only and for no other purposes what so ever*."
- The reason given for the condition is: "*To ensure the use of the building does not have a harmful environmental effect in the interests of amenity/in the interests of protecting the character of the area/in the interests of protecting residential amenity. To ensure the development accords with the application details and does not result in a medium to large scale horticultural packing and/or distribution centre*."

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is clearly justified and necessary and relevant to the development permitted with regard to the character and appearance of the area and living conditions of the occupiers of nearby dwellings.

Reasons

3. Planning permission has been granted for the cladding of an existing greenhouse on the appeal site. The site has a lengthy planning history and currently accommodates 2 greenhouses and 2 polytunnels, with planning permission for a further greenhouse which has not been implemented. The existing horticultural unit was established in 1996 and was most recently used for the growing of mainly alpines and perennials. However, there was no active use at the time of my site visit. The cladding of the greenhouse is necessary to facilitate its use for the packing and storage of vegetables proposed to be grown on the site. The use would therefore be incidental to the site's horticultural use.

4. The appeal site is located at the end of First Avenue, a long, narrow dead end road serving a number of dwellings and horticultural enterprises, with few opportunities for vehicles to pass each other along its length. The road is also a public footpath which continues diagonally across a field to the west of the appeal site. The vicinity is peaceful due to the absence of passing traffic and fields around the properties at the end of First Avenue. The access to the site passes immediately adjacent to No 101B First Avenue and close to both Nos 101A and 102 First Avenue, each a dwelling.

5. The disputed condition removed permitted development rights in order to ensure that the activities in the altered building remain incidental to the existing lawful use of the site. The application is for operational development only, not for the change of use of the building. However, it would fundamentally change the nature of the building from a glasshouse to an enclosed building to make it suitable for packing and storing produce. The proposed development is therefore linked to the future use of the building. Given that, I consider that the disputed condition is relevant to the approved development.

6. A small-scale packing and storage operation for produce from the site would not cause unacceptable harm to the character and appearance of the area or the living conditions of the occupiers of nearby properties. Such an operation would therefore accord in these respects with Policies 2, 32 and 48 of the Chichester Local Plan: Key Policies 2014-2029 (the Local Plan). These policies seek, in combination and amongst other things, to protect the character of the countryside and the living conditions of occupiers of nearby properties. Such a limited operation would also accord in these regards with paragraph 127 of the Framework which provides, amongst other things, similar protection to these considerations. I note that the Council shares these conclusions.

7. However, the building is of a significant size. I have no evidence that this is the size required for the packing and storing of produce from the holding and it seems highly probable to me that it is larger than that required. There is, therefore, the potential for its use as a larger scale packing and / or distribution centre serving other horticultural enterprises in the locality.

8. Such an intensification of the use of the building would be likely to lead to additional vehicle movements along First Avenue. This would in turn result in additional noise and disturbance and potential inconvenience to the residents of First Avenue, particularly to the occupiers of the dwellings neighbouring the site. Additional vehicle movements would also diminish the tranquillity of the area and potentially result in conflict with users of the public footpath. There could be consequent conflict with Policies 32 and 48 of the Local Plan.

9. Whilst a change of use of the building may require a separate grant of planning permission or of prior approval, the use of the building could intensify without there necessarily being a change of use. Furthermore, the prior approval process only allows the Council to consider a limited range of matters.

10. I consider that it is important that the Council has control over the future use of the building to allow it to fully consider the potential effects of a more intensive use of the building on the character and appearance of the area and the living conditions of the occupiers of nearby properties. Although a vegetable packing and storage operation requires a countryside location and

thus complies with Policy 2 of the Local Plan, the disputed condition is necessary to ensure compliance with Policies 32 and 48.

11. I am therefore satisfied that the condition is clearly justified and necessary and relevant to the development permitted with regard to the character and appearance of the area and living conditions of the occupiers of nearby dwellings.

12. Case law has established that conditions should fulfil some planning purpose, fairly and reasonably relate to the development being proposed and not be 'Wednesbury' unreasonable[1]. Paragraph 55 of the National Planning Policy Framework sets out that planning conditions should only be imposed where they comply with all of 6 tests. I am satisfied that the condition in dispute satisfies all these tests.

13. The appellant draws my attention to an appeal decision relating to the cladding of a barn elsewhere in West Sussex in which the Inspector noted that the application was for operational development only, not a change of use[2]. However, from the evidence before me, in that case the Council was concerned that the proposed changes were not necessary for a particular agricultural use. This is not the concern with the case before me. Accordingly, the circumstances for that previous appeal were different and I have determined the case before me on its own merits.

Other Matters

14. The appeal site lies within the Zones of Influence of the Chichester and Langstone Harbour and the Pagham Harbour Special Protection Areas (SPAs). The habitats of the SPAs provide essential feeding and roosting grounds for an assemblage of internationally and nationally important numbers of water birds, including Dark-bellied brent goose, Common tern and Little tern. These birds comprise the qualifying features of the SPAs and are vulnerable to disturbance from recreational activities. However, as the development would not give rise to additional recreational pressure, it will not have a likely significant effect on the integrity of these designated habitats sites.

Conclusion

15. For the reasons given above, and having regard to the other matters raised, the appeal is dismissed.

Martin Small

INSPECTOR

[1] Newbury DC vs SSE [1981] AC 578
[2] APP/Z3825/W/17/3189444