



Appeal Decision

Site visit made on 16 December 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2021

Appeal Ref: APP/E2340/W/20/3256138

Pine Garth Farm, Coal Pit Lane, Trawden BB8 8NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant 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 & Mrs Whiteoak against the decision of Pendle Borough Council.
 - The application Ref 20/0095/VAR, dated 10 February 2020, was refused by notice dated 15 July 2020.
 - The application sought planning permission for conversion of detached domestic garage including external alterations to form residential annex without complying with a condition attached to planning permission Ref 13/09/0333P, dated 23 September 2009.
 - The condition in dispute is No 3 which states that: "*The building/extension hereby permitted shall be used solely for domestic purposes incidental and ancillary to the enjoyment of the existing dwelling known as Pine Garth and shall not be used as a separate dwelling or for any other purpose whatsoever.*"
 - The reason given for the condition is: "*To protect the residential amenities of the site and neighbourhood.*"
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Decision

1. The appeal is dismissed.

Background

2. Originally a detached garage, the building was converted to an annex and occupied by a family member. Following changes in circumstances, the appellants now seek to create an independent dwelling with an unrestricted occupancy by removing condition 3. The reasons for the original condition related to the residential amenities of the site and neighbourhood. However, the Council consider that its removal would result in an independent dwelling in an isolated countryside location and would not, therefore, be appropriate.
3. The application Ref: 13/09/0333P (the original application) was submitted and described as a 'residential annex'. As such, the main parties have had the opportunity to comment on whether the removal of condition 3 would actually have the effect of creating a new independent residential dwelling. This relates to the principle handed down in the *Finney v Welsh Ministers* [2019] EWCA Civ 1868 judgement that an application to vary a previous planning approval may not be used to obtain a permission that would require a variation to the development as originally described.

Main Issue

4. Having regard to the above, the main issue is whether the removal of the condition would result in an independent dwelling and, if so, whether the location would be appropriate, having particular regard to development plan policy on housing in the countryside.

Reasons

5. Although the original application was submitted as a full application, and in section 18 of the application form it stipulated that it would create a 1-bedroom flat/maisonette, the description was for a 'residential annex'. It was not for a C3 dwellinghouse.
6. Whether a full application or a householder application form was completed does not change the description of development applied for. Nor, does section 18 of the application form. Moreover, an ordinary understanding of the purpose of the proposal, at that time, was not to create an independent 'flat/maisonette'.
7. Notwithstanding the fact that the building had all the facilities required to operate as an independent dwelling, the description of development sought was that of a residential annex. I have not been referred to a formal definition of an annex by either party. However, in my view, an ordinary understanding of the meaning goes beyond a physical proximity to another building but must also have a clear functional link. It is logical that a residential annex would thus be occupied in association with another building.
8. As such, there would be a clear conflict between the proposal and the description of the original approved development and, in the context of the original application for a residential annex, condition 3 is reasonable and necessary.
9. Even if I were to accept that the removal of the condition would result in a new independent dwelling there would be conflict with the development plan. Policy SDP2 of the Pendle Core Strategy (2015) stipulates, amongst other things, that proposals to develop outside of a defined settlement boundary will only be permitted for those exceptions identified in the National Planning Policy Framework (the Framework), or policies in a document that is part of the development plan for Pendle.
10. Whilst paragraph 79 of the Framework allows for the sub-division of an existing residential dwelling in the countryside, the courts have established (in *Wiltshire Council v SSHCLG & Mr W. Howse* [2020] EWHC 954 (Admin)) that the existing residential dwelling should be taken to mean the dwelling as one physical building rather than a wider residential unit encompassing other buildings. As such, the proposal would not accord with the exception within paragraph 79 d) of the Framework. In this sense the appeal proposal differs from the 'reference case' cited by the appellant.
11. The appeal site is located near to the settlement and there are other properties nearby. However, Policy ENV4 and LIV1 of the CS refer back to the settlement hierarchy and site selection criteria in Policy SDP2. In this context the appeal site's location in the countryside, physically divorced from, and not well related to, an existing settlement would conflict with the requirements of Policies SDP2, LIV1 and ENV4 of the CS. These policies broadly seek, amongst other

things, to control development in the open countryside and to locate new housing in accessible locations.

12. The absence of harm in respect of other considerations, such as the effect on the character and appearance of the area, living conditions of occupiers of neighbouring properties and highway safety are neutral matters that weigh neither for nor against the proposal. Moreover, the benefits from a single dwelling to the overall housing supply would be limited and would not justify a departure from the development plan.

Other Matters

13. Coal Pit Farmhouse and Attached Barn are listed together as a grade II listed building. The Council does not consider that the proposal would harm their setting in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Given there would be no physical alterations proposed I have no reason to disagree. Nonetheless, this does not alter or outweigh my conclusion on the main issue.
14. I note that the personal circumstances have changed regarding the occupation of the appeal building from when it was originally approved. However, these circumstances led to the original approval and, in this respect, do not justify a departure against the current development plan.

Conclusion

15. For all the above reasons the appeal is dismissed.

Robert Walker

INSPECTOR