



Appeal Decision

Site visit made on 2 June 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 June 2021

Appeal Ref: APP/K0425/W/21/3269965

Park Mill Stables, Park Mill, Princes Risborough HP27 9QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant planning permission under section 73 of the Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Glock against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application Ref 20/07035/VCDN, dated 7 August 2020, was refused by notice dated 6 October 2020.
 - The application sought planning permission for "householder application for conversion of ground floor storage area to enlarge existing annex accommodation used ancillary to main dwelling, re-location of door, fenestration alterations and re-clad end gable (alternative scheme to pp 14/06250/FUL)" without complying with a condition attached to planning permission Ref 17/06363/FUL, dated 3 July 2017.
 - The condition in dispute is No 4 which states that: "The accommodation hereby permitted shall only be occupied in connection with and ancillary to the occupation of the existing dwelling and shall at no time be severed and occupied as a separate independent unit".
 - The reason given for the condition is: "To prevent the undesirable establishment of a separate independent unit not in accordance with policies for the area".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal seeks permission for the development allowed under planning permission reference number 17/06363/FUL (the original permission) but without complying with the disputed condition. As well as physical works to the building, the original permission allows the conversion of the ground floor area to 'enlarge existing annex accommodation used ancillary to the main dwelling'. The development has been carried out. The disputed condition restricts occupancy of the accommodation to that in connection with the existing dwelling and prevents it being used as a separate independent unit.
3. The judgement handed down in *Finney v Welsh Ministers and Others [2019] EWCA Civ 1868* (herein referred to as Finney) held that an application under section 73 of the Act could not be used to obtain planning permission that requires a variation to the terms of the 'operative' part of the planning permission. Finney established that amendments cannot be made to conditions so that a discrepancy would be created with the description of development.

4. I have sought the views of the main parties on the implications of Finney for this appeal. The Council contend the proposal would fundamentally alter the development allowed under the original permission and so the permission now sought would be beyond the scope of section 73 of the Act. The appellant disagrees and states the removal of the disputed condition would not imply or result in a change to the approved scheme.
5. Notwithstanding the Council's refusal reasons and in light of the different views on the matter, the main issue is whether section 73 of the Act allows the development allowed by the original permission without the disputed condition.

Reasons

6. The building subject of this appeal fronts onto the road. The submissions indicate it is in the ownership of the occupiers of Park Mill House which lies directly opposite on the other side of the lane.
7. The 'operative' part of the original permission is explicit in referring to the approved accommodation as being used ancillary to the main dwelling. There is no reference on the original permission to the creation of a new dwelling separate from Park Mill House. Nevertheless, the drawings referred to on the original permission show the accommodation would provide a kitchen, shower/toilet room and store at ground floor. Also, the plans show a bedroom at first floor level served by a staircase from the ground floor area. On my visit I saw that the building is laid out generally in accordance with the approved plans. While the Council raises concerns over the amount of internal space, there is no dispute between the parties that the facilities in the building are sufficient to allow day-to-day independent domestic existence.
8. The proposed removal of the condition and its restrictions on occupancy would allow the appeal building to be used as a dwelling separate from Park Mill House. This is particularly the case as it contains all the facilities for independent living and is detached from and on the opposite side of the road to the main house. The appellants do not seek to change the description of development as allowed under the original permission. However, their stated intention is to make the accommodation available to people who have no connection to occupiers of Park Mill House. Therefore, the effect of the appeal proposal would be to allow a fundamental change in the use of the building to a separate, independent living unit. This would create a disaccord with the operative part of the original permission that refers to the accommodation being used ancillary to the main dwelling.
9. As such, and having regard to Finney, I conclude that section 73 of the Act does not allow the development allowed under the original planning permission without the disputed condition. Instead, it would be necessary for an application to be made seeking approval for the change of use of the building.

Conclusion

10. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR