



Appeal Decision

Site Visit made on 20 May 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Appeal Ref: APP/G2713/W/21/3268767 Dunelm, Sneck Gate Lane, Newby TS8 0AQ

- 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 Richard Stinton against the decision of Hambleton District Council.
 - The application Ref 20/02543/FUL, dated 11 December 2020, was approved on 21 January 2021 and planning permission was granted subject to conditions.
 - The development permitted is change of use of ancillary room to a clinic room for home therapy business.
 - The condition in dispute is No. 1 which states that: The temporary permission hereby granted is valid only until 22 January 2022.
 - The reason given for the condition is: To support a business in the short term and allow a mechanism of review. Reflecting policies DP1 and DP28.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have taken the description of development from the Council's Decision Notice as this is more precise.

Application for costs

3. An application for costs was made by Mr Richard Stinton against Hambleton District Council. This application is the subject of a separate Decision.

Background and Main Issue

4. The appellant was granted planning permission for the change of use of the former garage at the property for use as a clinic room for a home therapy business subject to a condition allowing the use only until 22 January 2022. The appellant seeks to remove the condition with the effect of allowing the change of use to be permanent.
5. The main issue is whether the condition is necessary having regard to the location of the appeal site and the requirement to promote sustainable development and minimise the need to travel.

Reasons

6. The appeal site is part of a two-storey semi-detached property located in the small village of Newby. Newby is not within the settlement hierarchy as defined in the Local Plan.

7. Policy CP4 of the Hambleton Local Development Framework (LDF) Core Strategy (2007) outlines the circumstances in which development in locations outside the settlement hierarchy will be allowed. The policy outlines that development will only be supported when an exceptional case can be made for the proposal.
8. The above policy states that the exceptional case that is necessary should also be made in terms of Policy CP2 which outlines that development and the provision of services should be located as to minimise the need to travel and include measures that reduce the need to travel by private car.
9. The Council, in their assessment, considered that whilst the location of the development did not meet the principle of the location policy, they considered that the unique circumstances surrounding the Covid-19 pandemic were justification to grant planning permission for a temporary period.
10. From my observations on my site visit, access to the site by means other than private car appears to be extremely limited. Additionally, the location of the appeal site in a relatively isolated small village location would ultimately lead to clients travelling by private car over long distances.
11. By reason of the location of the appeal site, the removal of the condition would result in the creation of an unsustainable form of development. I find that the material considerations of the application, that included the impacts of the Covid-19 pandemic to which the Council gave weight, were such that it was necessary to impose a condition that restricted the development to a temporary period.
12. The appellant has commented that the Council were aware that the appellant sought consent on a permanent basis and in reference to case law¹ consider that the condition is not valid as it alters the nature of the development permitted, as permission was sought on a permanent basis. Under section 72 of the Town and Country Planning Act 1990 the local planning authority may grant planning permission for a specified temporary period only. In my view, the condition does not alter the nature of development. Even with the condition, the description of development is unaltered and remains a change of use of ancillary room to a clinic room for home therapy business.
13. The Planning Practice Guidance (PPG) – Use of planning conditions, outlines that circumstances where a temporary permission may be appropriate include where it is expected that the planning circumstances will change in a particular way at the end of that period. In this case, it is necessary that in light of the Covid-19 pandemic, the change of use is for a temporary period, until lockdown restrictions are eased. Regardless, the appellant would have the opportunity to apply to renew the consent.
14. I therefore conclude that the condition is necessary in the interests of sustainable development and the need to minimise the need to travel, particularly by private car. The removal of the condition would result in the development being contrary to Policies CP2 and CP4 of the Hambleton LDF (Core Strategy) (2007).

¹ Cadogan V SSE (1992) and Finney v Welsh Ministers (2020)

Other Matters

15. The appellant is of the view that the use of part of their home for the purposes that have been outlined may not require planning permission in the first instance. That is not the matter before me in this appeal and there are other mechanisms available to the appellant to establish whether or not the use requires planning permission.
16. Although no objections were received from neighbours, the Parish Council or the Local Highway Authority, the absence of harm or objections is a neutral factor in the planning balance.
17. I acknowledge that the change of use involves a financial commitment and the temporary nature of the consent would require consideration for the longer term of the business. The costs schedule submitted is not itemised and I can not be certain of the accuracy of the figure that has been provided. Either way, I do not find the condition to be unreasonable and these matters do not outweigh the harm that would be caused by removing the condition.
18. The Council's reason for the condition refers to Policies DP1 and DP28 of the Hambleton LDF (Development Policies) (2008). The appellant has commented that these relate to matters of residential amenity and heritage assets, that are not reasons which the Council argue were for imposing the conditions. Although I acknowledge that these policies and issues are not pertinent to the appeal, I cannot disregard the policies that are referred to in the Council's evidence to which I find that removal of the condition would make the development contrary to.
19. The appellant contends that the proposal complies with Policy DP18 of the Hambleton LDF (Development Policies) (2008) which involves support for small businesses/working from home. Although this may weigh in favour of the appeal, the compliance with this policy, however, does not outweigh the conflict with the other policies of the development plan which I have identified.
20. The appellant has outlined how the development would improve their work/life balance. This is nevertheless of personal circumstance. When considered against the PPG that outlines planning is concerned with land use in the public interest, I afford this matter only limited weight in favour of the proposal.
21. The appellant has referred to inconsistencies between the Council's pre-application response, the officer report, the decision notice and the appeal statement. The existence of any such inconsistencies is not however a reason to allow the appeal, which I have determined based on the evidence before me, particularly as it relates to the development plan and the other material considerations of the case.

Planning Balance and Conclusion

22. The Government's objective as set out in the National Planning Policy Framework (2019) is to support sustainable economic growth. The economic benefits of the scheme attract moderate weight.
23. However, in light of the evidence before me, I am not convinced that an exceptional case has been made, as is required. The location of the development, outside the settlement hierarchy, would undermine the Council's plan-led approach in seeking that services should be sustainably located as to

minimise the need to travel and include measures that reduce the need to travel by private car. These matters attract significant weight and outweigh the benefits associated with the proposed development.

24. The removal of the condition would therefore conflict with the development plan and there are no other considerations, including the Framework, that outweigh this conflict.
25. For the reasons given above, and having had regard to all other matters raised, I conclude that the condition meets the tests outlined in paragraph 55 of the Framework, insofar that it is necessary, relevant to planning and the development permitted, enforceable, precise and reasonable in all other respects. Accordingly, the condition should be retained in its current form and the appeal be dismissed.

A M Nilsson

INSPECTOR