



Appeal Decision

Site visit made on 25 March 2021

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 15 June 2021

Appeal Ref: APP/V2635/W/20/3257789

Meadow View, Black Horse Road, Clenchwarton, PE34 4DN

- 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 John Statham of Supreme Surfacing Ltd against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref:19/02212/F, dated 23 December 2019, was refused by notice dated 18 February 2020.
 - The application sought planning permission for Proposed dwelling and retention of part of existing bungalow as annexe without complying with a condition attached to planning permission Ref: 19/00989/F, dated 12 September 2019.
 - The condition in dispute is No 6 which states that: The occupation of the dwelling and annexe hereby approved shall be limited to a person solely or mainly working, or last working in the associated surfacing and groundworks business (contained within blue land to the immediate south of the application site as shown on Dwg. 5807-PL03B), or a widow or widower of such a person, and to any resident dependants.
 - The reason given for the condition is: Given that the new dwelling and annexe would lie in close proximity to existing business uses and buildings, its use as an independent dwelling and annexe would be significantly affected in terms of residential amenities; and to accord with the provisions of the NPPF, Core Strategy Policy CS08 and Policy DM15 of the SADMPP.
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Decision

1. The appeal is allowed and the planning permission is granted for a proposed dwelling and retention of part of existing bungalow as annexe at Meadow View, Black Horse Road, Clenchwarton, PE34 4DN in accordance with the application Ref: 19/02212/F dated 23 December 2019, without compliance with condition number 6 previously imposed on planning permission Ref: 19/00989/F and subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the 12 September 2022.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 5807-PL01G, 5807-PL02d; 5807-PL03B.
 - 3) The development permitted by this planning permission shall be carried out in accordance with the mitigation measures proposed in the submitted Flood Risk Assessment (FRA) ref: GCB/HUMPHREY, prepared by Geoff Beel Consultancy, dated April 2018. These measures include the following:
 - Ground floor levels will be set at a minimum of 4.10m AOD; and

- Flood resistant construction will be incorporated up to 600mm above the finished floor level.
- 4) Notwithstanding the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the enlargement, improvement or other alteration to the dwelling house shall not be allowed without the granting of specific planning permission.
 - 5) Within six months of occupation of the new dwelling hereby approved, the alterations to the existing bungalow on the site shall be completed in accordance with the approved plans to create the annexe accommodation. The annexe shall thereafter be used as ancillary accommodation to the main house and shall at no time be used as an independent unit of residential accommodation.

Main Issue

2. The main issue is whether the condition restricting the use of the accommodation is reasonable or necessary having regard to the living conditions of future occupants with particular regard to noise and disturbance.

Reasons

3. The appeal site comprises a parcel of land accessed from Black Horse Road along a long access track. The site is relatively well contained along three sides by mature vegetation and presently contains a bungalow. The approved single storey dwelling would be located within the existing garden area of the bungalow. It would in effect replace the existing bungalow albeit part of the existing dwelling would be retained as a residential annexe ancillary to the main residential use of the dwelling.
4. Presently, the dwelling is not tied to the existing business use which is positioned beyond the southern boundary of the appeal site. The existing business is not subject to any restriction in terms of its hours of operation and therefore it would be open to the business owner should he choose to do so, to operate the business 24 hours per day for each day of the week.
5. I have given careful consideration to a previous appeal decision at the appeal site¹. However, the previous scheme concerned a new dwelling together with the retention of the existing bungalow as an office for business use and a shared parking area. It is therefore not directly comparable to the appeal scheme which is solely for a residential use. I have therefore considered the appeal before me on its individual planning merits.
6. However, I concur with the previous Inspector's findings insofar as the current arrangement of the bungalow and business results in these being relatively separate from each other and thus does not cause harm to the living conditions of the existing occupants. Albeit the proposed dwelling would be positioned closer to the shared boundary with the business and its access track, in my view, it would nevertheless remain reasonably separate from the business use.

¹ APP/V2635/W/16/3163079

7. The appellant's Noise Assessment Report (NAR) demonstrates that there would be no adverse impact on the living conditions of the future occupants of the proposed dwelling based upon the current operation of the business use. However, the Council have questioned whether the NAR was undertaken over a period that is typical of everyday usage. Nonetheless, there is little evidence before me to substantiate this view. I acknowledge that, in the absence of any control, the operating arrangements for the business could alter in the future and this could lead to a greater commercial usage including an increased use of the access track. However, even so, there is little evidence before me to demonstrate that this would result in an unduly harmful effect upon the living conditions of the future occupants of the proposed dwelling.
8. Furthermore, I am mindful that in the absence of a condition restricting occupation of the existing bungalow, the effect of a more intensively operated business could be experienced by the occupants of that dwelling.
9. Overall, taking everything into consideration, I conclude that the occupation of the dwelling separately and independently of the existing business use would not be significantly harmful to the living conditions of the future occupants of the proposed dwelling with particular reference to noise and disturbance. The proposal would accord with Policy CS08 of the King's Lynn & West Norfolk Borough Council Local Development Framework Core Strategy (2011)(CS) and Policy DM15 of the Borough Council of King's Lynn and West Norfolk Site Allocations and Development Management Policies Plan (SADMPP)(2016). Among other things, these policies require new development to be designed to a high quality and seek to avoid development that has a significant adverse impact on amenity.
10. Furthermore, the appeal scheme would accord with the aims of the National Planning Policy Framework insofar as it requires new development to be of a high quality design, seeks to prevent new development from being adversely affected by unacceptable levels of noise pollution, and seeks to avoid existing businesses being made subject to unreasonable restrictions as a result of development permitted after they were established.

Conditions

11. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the original permission has not been implemented, I shall impose all those conditions that remain relevant. I have amended the standard time condition to ensure that the time period within which the development must start runs from the date of the original permission. This concurs with the advice of the PPG².
12. The Council have requested an additional condition requiring the provision of an acoustic fence. However, on the basis of my findings above I am not satisfied that this measure is necessary in order to make the appeal scheme acceptable. As such, I have not imposed such a condition.

² Planning Practice Guidance ID 17a-014-20140306

Conclusion

13. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted in accordance with the conditions set.

E Brownless

INSPECTOR