



Appeal Decision

Site Visit made on 22 June 2021

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 July 2021

Appeal Ref: APP/V2723/W/21/3272480

Windrush, Moor Road, Bellerby, Leyburn DL8 5QX

- 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 Carl Jackson against the decision of Richmondshire District Council.
 - The application Ref 20/00384/VAR, dated 2 February 2020, was refused by notice dated 25 March 2021.
 - The application sought planning permission to vary condition 6 of an existing planning permission without complying with a condition attached to planning permission Ref 17/00452/FUL, dated 17 August 2017.
 - The condition in dispute is No 6. which states that: the living accommodation created as a result of the development hereby approved shall be used in association with and remain ancillary to the main dwelling house, and at no time shall form a separate dwelling unit unless the formal approval of the Local Planning Authority has first been obtained.
 - The reason given for the condition is: The accommodation and its relationship to its surroundings is not suitable for occupation as a separate and self-contained dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Section 73 of the Town and Country Planning Act 1990 (s73) allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted.
3. The Courts have held that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission i.e., the description of the development for which planning permission had originally been granted.
4. In this case, planning permission was granted for alterations to the Coach House to create additional living space ancillary to the main dwelling. The application subject to the appeal sought removal of a condition to allow the Coach House to be used as a holiday let.
5. In an appeal of this nature the description of development in an existing planning permission cannot be amended at all. Only the conditions can be varied. If amending a condition would result in a conflict between it and the description of development, then that particular amendment is beyond the

- powers under s73 and cannot be made (a fresh planning application would be required).
6. The appellant is of the view that the building and its intended use as a holiday let, would remain ancillary to the main dwelling. It is not within the confines of this appeal for me to determine whether this would be a lawful use under the current planning permission.
 7. Despite the fact that there would be no change in the layout; it is within the grounds of the main dwelling; and utilities are derived from the main dwelling, the use as a holiday-let whereby the occupants of the accommodation would not be related to the occupants of the main dwelling and the accommodation would have all the facilities for day-to-day living; as a matter of fact and degree, and from the evidence before me, I maintain that the use of the building as a self-contained holiday, would fundamentally alter the original planning proposal for which permission had been granted. It would thus not be within the powers of s73.
 8. The appellant outlines that there is no stipulation in the condition that the ancillary living accommodation should be wholly used by the occupants of the main dwelling or be with or without financial transaction. Again, should the appellant be of the view that such factors would maintain an ancillary status that would be within the confines of the existing planning permission, there is a mechanism available to seek to demonstrate this.
 9. The condition suggested by the appellant that the building to be used as a holiday let for a minimum 140 days per year, leaving a maximum of 225 days which would be non-holiday let use would not alter my finding that there would be a clear conflict with the description of the development in the original planning permission.

Conclusion

10. The appeal is beyond the powers of s73 and I am therefore unable to determine the appeal under this route. On this basis, the appeal is dismissed.

A M Nilsson

INSPECTOR