



Appeal Decision

Site Visit made on 2 November 2021

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 March 2022

Appeal Ref: APP/M9496/W/21/3279746

White Edge, The Bent, Curbar S32 3YD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 C Simm against Peak District National Park Authority.
 - The application Ref: NP/DDD/0421/0473 is dated 27 April 2021.
 - The application sought planning permission for the remodel and extension of existing dwelling without complying with a condition attached to planning permission Ref NP/DDD/0920/0844, dated 7 January 2021.
 - The condition in dispute is No 2 i) which states that: *Notwithstanding what is shown on the approved plans, no permission is hereby granted for any window opening to the master bedroom other than in accordance with an amended scheme for a smaller two light casement frame that shall first have been submitted to the Authority for approval in writing. Once approved the opening and frame shall be installed and thereafter maintained throughout the lifetime of the development in full accordance with the agreed details.*
 - The reasons given for the condition is: *For clarity and for the avoidance of doubt.*
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Decision

1. The appeal is allowed and planning permission is granted for the remodel and extension of existing dwelling at White Edge, The Bent, Curbar S32 3YD in accordance with application ref: NP/DDD/0421/0473, dated 27 April 2021 without compliance with condition 2 i) previously imposed on NP/DDD/0920/0844 dated 7 January 2021, but subject to the conditions in the attached schedule.

Preliminary Matters

2. Construction works were ongoing at the time of my visit on the appeal site. The Authority has stated that the appellant is implementing the planning application Ref: NP/DDD/0321/0339 and not Ref: NP/DDD/0920/0844. The appellant has however applied to remove the condition from the latter. The difference between the two applications is said to relate to the removal of condition 16 in relation to the provision of a roof void/tiles for bats and the variation of condition 3 on the implementation of landscaping allowing for a 3 year period. It is not clear from my site observations which permission is being implemented, although I note the permissions are the same other than in relation to these two conditions. I have determined this appeal as applied for, relating to Ref: NP/DDD/0920/0844, but have had regard to the conditions that have previously been varied/removed.

3. Planning permission was granted for the remodelling and extension of the appeal dwelling (LPA Ref: NP/DDD/0920/0844) which had a condition that excluded granting consent for a window at first floor level on the rear elevation and required the submission of details relating to a smaller window. The Authority did not issue a decision on the application that sought to remove the subject condition 2 i), but their Statement sets out that the condition is necessary to harmonise with the character and appearance of the host property and the area.
4. The approved plans listed in condition 2 of the permission include those that illustrate the master bedroom window at first floor level. A planning permission cannot however grant consent for a scheme and then expressly prohibit or exclude one part of it through a condition, such as the subject window, which is an integral part of the development by providing light and outlook to the room it would serve. This approach effectively nullifies the benefit of the planning permission.
5. I appreciate the condition required details of a smaller window to be submitted and approved by the Authority, which the appellant has subsequently submitted and had approved in writing. However, having regard to the Newbury¹ principles and paragraph 56 of the National Planning Policy Framework, a condition should be reasonable in all respects. As imposed, the subject condition 2 i), effectively revokes part of a development that planning permission has been granted for. I consider, as set out in the Newbury principles, for this to *'be so unreasonable that no reasonable authority could have imposed'* it and this renders the condition invalid.
6. Although it is clear that the Authority required a smaller window to the master bedroom for the development to be acceptable, it is not necessary for me to consider the planning merits of the case. If the Authority had considered a smaller window to be necessary, it should have sought amended plans during the consideration of the application or refused permission had this change to the window not been forthcoming. Imposing a condition in the circumstances was unreasonable.

Conclusion and Conditions

7. For the reasons given above I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without the disputed condition 2 i), without condition 16 and with an amended condition 3 for reasons I have set out earlier in the decision. Condition 6 will also be amended removing reference to the first floor rear gable window. I have imposed those undisputed conditions that are still subsisting and capable of taking effect.

F Rafiq

INSPECTOR

¹ Newbury DC v SSE [1981] AC 578

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall be begun within 3 years from the date of the original permission NP/DDD/0920/0844.
2. The development hereby permitted shall not be carried out otherwise than in complete accordance with the amended site plans and amended elevations (no's, A287_PL006 Proposed Ground Floor Plan, A287_PL007 Proposed First Floor Plan, A287_PL008 Proposed Roof and Landscape Plan, A287_PL009 Proposed Elevations, A287_PL010 Proposed Side Elevations and A287_PL011 Proposed Site Section) subject to the following conditions and/or modifications.
3. Within three months of the date of this decision full details of both hard and soft landscape works shall be submitted to and approved in writing by the National Park Authority and thereafter these works shall be carried out as approved within 3 years of occupation. These details shall include for the retention of the middle two conifers shown removed on the amended plans, and at a minimum height of no less than the eaves height of the new dwelling.
4. Prior to the erection of the dwelling a one metre square sample panel of the reclaimed natural gritstone proposed to be used for the external walling shall be constructed on site for inspection and approval in writing by the Authority. Once approved all subsequent walling shall be carried out entirely in accordance with the agreed sample panel unless otherwise agreed in writing by the Authority.
5. Prior to the erection of the dwelling, a specification or sample of the blue slate roofing shall be submitted for approval in writing by the National Park Authority. Once agreed the development shall thereafter be carried out in accordance with the approved specification/sample and shall be permanently so maintained.
6. Prior to the installation of any windows, full details of their precise design, as well as any glazing bar detail and external finish, shall be submitted to and approved in writing by the National Park Authority. The development shall thereafter be carried out in accordance with the approved specification and shall be permanently so maintained.
7. Prior to the installation of any doors and windows precise details of the external finish, shall be submitted to and approved in writing by the National Park Authority. The development shall thereafter be carried out in accordance with the approved details and shall be permanently so maintained.
8. The premises shall not be brought into use until the three parking spaces shown on the amended plan each measuring 2.5m x 5.5m have been laid out and surfaced in accordance with the details shown on the approved plans.

9. Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 (or any order revoking or re-enacting that Order) no alterations to the external appearance of the dwelling shall be carried out and no extensions, porches, ancillary buildings, solar or photovoltaic panels, gates, fences, walls or other means of boundary enclosure shall be erected on the site without the National Park Authority's prior written consent, apart from fences, walls or other means of enclosure to the rear boundaries of the curtilage behind the front line of the building without the National Park Authority's prior written consent.
10. The development shall be carried out in full accordance with the revised Sustainability Statement with written verification provided to the Authority immediately following completion of the approved development.
11. All new door and window frames shall be recessed a minimum of 75mm from the external face of the wall. The lintels and sills to the door and window openings shall all be natural gritstone. The recessed gritstone panel proposed in the gable end of the east facing rear wing shall be omitted and the walling built flush to the external face of the rest of the gable wall. No fascia boards shall be fitted at the eaves.
12. The development shall be carried out entirely in accordance with the recommendations within the submitted Bat Survey report from Dunelm Ecology dated September 2020.