



Appeal Decision

Site visit made on 1 April 2022

Decision by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2022

Appeal Ref: APP/A0665/W/21/3288484

2 Summerfield Drive, Moulton, Northwich, Cheshire CW9 8PU

- 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 Mrs Kelly Mankee against the decision of Cheshire West and Chester Council.
 - The application Ref 20/03530/FUL, dated 14 September 2020 was approved on 29 November 2021 and planning permission was granted subject to conditions.
 - The development permitted is external alteration to provide Juliet balcony and screen in southern side elevation.
 - The condition in dispute is No. 4 which states that: Unless within four months of the date of this permission, the development has been implemented in its entirety, the Juliet balcony opening hereby approved shall be blocked up and have an external material finish to match the brickwork used in the existing building. The development hereby permitted and implemented shall be retained as approved thereafter
 - The reason given for the condition is: To ensure that the external appearance of the development is appropriate to its surroundings.
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Decision

1. The appeal is allowed and the planning permission Ref 20/03530/FUL for external alteration to provide Juliet balcony and screen in southern side elevation at 2 Summerfield Drive, Moulton, Northwich, Cheshire CW9 8PU granted on 29 November 2021 by Cheshire West and Cheshire Council, is varied by deleting condition No. 4.

Main Issue

2. The main issue is whether the disputed condition is reasonable and necessary, having regard to the effect of the development on the character and appearance of the surrounding area.

Reasons

3. The appeal site comprises a detached dwelling located at the junction of Summerfield Drive and Main Road. The dwelling has a second floor Juliet balcony on its southern elevation with frosted glass balustrade screen. Planning permission was granted for the balcony retrospectively under reference 20/03530/FUL, subject to several conditions.
4. This included at condition 2 that the proposal should be carried out in accordance with submitted plans. These plans include the provision of a replacement balustrade screen with a colour finish to blend with the brickwork of the dwelling, and white upvc strips across the balcony to replicate the appearance of a window.

5. However, the permission was also subject to condition 4, which stated that if the development had not been implemented in its entirety within four months, the Juliet balcony should be blocked up with an external material finish to match the brickwork of the existing building.
6. Planning Practice Guidance (PPG) and the National Planning Policy Framework (the Framework) make it clear that planning conditions should only be used where they satisfy six tests, which include amongst other things that the conditions must be reasonable and necessary.
7. The PPG states that conditions requiring development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. While it is clear that permission has not been granted for the scheme in its current form, condition 2 ties the proposal to the approved plans in order to protect the character and appearance of the area. As such, the addition of condition 4 goes beyond what is necessary in this regard.
8. The PPG continues that such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development. It is not normal practice to require developments to be completed and I do not see anything about this particular development to justify such an approach.
9. In addition, the condition in dispute requires the development to be carried out within a specified timeframe. A range of external factors could also contribute to the appellant's ability to meet a specified timeframe, particularly one of four months as given in this case. As such, I consider the condition would also fail the test of being reasonable, particularly given that it is not standard practice for a time limit to be given for completion.
10. I appreciate that the Council regards it as desirable for the development to be completed as soon as possible to address what it sees as a harmful existing development. However, specific provisions for addressing unauthorised development are provided elsewhere in legislation. Whatever the merits of the scheme the Council has permitted, I am not persuaded that it should seek to impose a specific timescale on the appellant as a way to remove a development it regards as undesirable.
11. For the reasons given above, condition No. 4 attached to planning permission 20/03530/FUL is neither necessary or reasonable having regard to the character and appearance of the surrounding area. It therefore fails to comply with the PPG and the Framework in this regard. Since I have concluded that the condition is not necessary in the interests of the character and appearance of the area, it follows that the design aims of Policy DM21 of the Chester West and Cheshire Council Local Plan would not be undermined.

Conclusion

12. In the light of the above, I intend to vary the planning permission, Ref 20/03530/FUL, by the deletion of condition No. 4. No replacement conditions are necessary. The original planning decision for application Ref 20/023530/FUL and this decision are to be read together and form the planning permission for the development. In the way described, the appeal succeeds.

C Rafferty

INSPECTOR