



Appeal Decision

Site visit made on 19 October 2022

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/W4223/W/22/3298799

10 Sycamore Cottages, Treetops Close, Dobcross, Oldham OL3 5BT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) 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 Mrs Susan Bowden against the decision of Oldham Metropolitan Borough Council.
 - The application Ref VAR/348675/22, dated 13 March 2022, was refused by notice dated 22 April 2022.
 - The application sought planning permission for a detached log cabin to be used as ancillary living accommodation without complying with a condition attached to planning permission Ref PA/337483/15, dated 10 December 2015.
 - The condition in dispute is No 2 which states that: The building hereby permitted shall not be occupied or used at any time other than for purposes ancillary to the residential use of the dwellinghouse known as no. 10 Sycamore Cottages, Treetops Close, Dobcross, OL3 5BT.
 - The reason given for the condition is: The site, by reason of its location, and having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, is not considered suitable for use as separate residential accommodation and would conflict with Policy 9 and Policy 11 of the Joint Development Plan Document forming part of the Local Development Framework for Oldham.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs Susan Bowden against Oldham Metropolitan Borough Council. This application is the subject of a separate decision.

Background and Main Issue

3. The condition in dispute requires that the building (a log cabin) remains ancillary to the residential use of No 10 Sycamore Cottages. I note the Council's confirmation that the 2015 application for the log cabin was submitted on a full planning application form, with no reference to ancillary accommodation within the applicant's description of development. This information is not contested by the appellant, but it is also not in dispute that the approved development description remains relevant. Although there have been submissions with evidence from the Council regarding possible breaches of the disputed condition, those matters are not for me to rule upon given the terms of the appeal. The application was not made on the basis of s73A of the Act to retain development already carried out.

4. The appellant is seeking to remove the condition, on the basis that it is not necessary, as it repeats the description of the development. However, whilst the removal of the disputed condition would not alter the limitation of the use within the original description of the development, it would potentially alter the manner or scope in which the use could be exercised. Not only is the building required by the disputed condition to remain in ancillary use, it is also required to be occupied or used only for purposes ancillary to the residential use of No 10 Sycamore Cottages. This prevents its use for purposes ancillary to another dwelling which may not in itself require planning permission, if that did not entail a material change of use.
5. The main issues are therefore the effect that removing the condition would have with respect to:
 - i. the living conditions of occupiers of No 10 Sycamore Cottages, and
 - ii. highway safety.

Reasons

Living conditions

6. The log cabin is positioned beyond the side elevation of No 10 Sycamore Cottages and is separated from No 10 by a small patio area with seating. A further open gravelled area with picnic table is positioned to the west, along with a low fenced garden to the front of No 10, separated by a public path (Bridleway 119). The other cottages on this small row, similarly, have gardens to the front, separated by the path.
7. The side elevation of No 10 includes windows and a door, which provides access to the patio area. The log cabin also has doors and windows facing onto this patio area at close quarters. This physical arrangement of the log cabin to No 10 justifies retention of the log cabin as ancillary living accommodation to the occupiers of No 10 only, because were the log cabin to be used by anyone not associated with the host dwelling, then there would be an unacceptable loss of privacy from overlooking, resulting in harm to the living conditions of the occupiers of No 10.
8. Condition 2 effectively and precisely limits the scope in which this use can be exercised to ancillary accommodation to No 10 Sycamore Cottages only. Without this added precision, then it could be open to interpretation as to which residential property the log cabin would be ancillary to. Whilst this could be implied from the decision notice, given that the location is referenced as '*No 10 Sycamore Cottages...*', this locational reference is not contained within the description itself. Planning permission runs with the land and I note the less typical arrangement of this house to its garden, along with the other cottages on the row, with public access extending through these properties and providing direct and independent access to the log cabin. Therefore, the precision of the condition removes any doubt that ancillary use of the log cabin should be in relation to No 10 only.
9. As such, the condition remains necessary to ensure that there would be no harm to the living conditions of occupiers No 10 Sycamore Cottages, complying with Policy 9 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies, Adopted 9 November 2011 (DPD), which, amongst other matters, seeks to

ensure that the privacy of existing and future occupiers is not significantly harmed. Whilst I note the decision notice also cites Policy 11, this relates to new residential development and is not directly relevant to this main issue.

Highway safety

10. The residents of No 10 and the other cottages on this short terrace, park in a shared area to the south of No 4 Sycamore Cottages. This parking area is not very large and there did not appear to be any additional in-curtilage parking for these cottages. There is some scope for additional on street parking within Treetops Close, albeit this is restricted to a degree by the width of the road and the presence of private driveways. Any increased demand for parking within this area could give rise to indiscriminate parking and difficult manoeuvring of vehicles, to the detriment of highway safety.
11. As set out above, condition 2 effectively and precisely limits the scope in which this use can be exercised as ancillary accommodation to No 10 Sycamore Cottages only. Whilst I have no information to establish the likelihood of it being used as ancillary accommodation other than in relation to No 10, the potential exists and, in the event that this condition was removed, the alternative could result in an increased demand for access and parking that would be detrimental to highway safety at this location.
12. As such, the condition remains necessary to ensure that there would be no harm to highway safety, as required by Policy 9 of the Oldham Local Development Framework, Development Plan Document – Joint Core Strategy and Development Management Policies, Adopted 9 November 2011 (DPD), which, amongst other matters, seek to ensure that acceptable arrangements are made for access and parking. Whilst I note the decision notice also cites Policy 11, this relates to new residential development and is not directly relevant to this main issue.

Other Matters

13. I have been provided with extensive information by both main parties and third parties relating to use of the log cabin as a holiday let, including details of various enforcement proceedings and examples of other buildings being advertised for holiday let purposes. However, for the purposes of this appeal, I am required to reach a decision only on the matter of whether condition 2 to planning permission PA/337483/15 should be removed or not, and so my decision is limited to this matter only.
14. I have also been provided with an example of a Lawful Development Certificate (LDC) relating to an outbuilding that would be permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) at a different address. The lack of any condition restricting this building to ancillary use is highlighted. However, in issuing a LDC the relevant authority has no power to impose conditions, only to determine if the development is lawful or not.
15. I note the appellant's reference to a campaign of harassment by neighbours and reference to anonymous letters of representation. The officers report references only two representations received at the planning application stage, which have been provided with the appeal documentation. Both representations include names and addresses. Two representations have been

received following the appeal submission, both of which include names and addresses. As such, I have not been provided with, or given any weight to any anonymous representations in my determination of this appeal.

Conclusion

16. The condition is reasonable and necessary by providing the required level of precision in restricting the use of the building for purposes ancillary to the residential use of No 10 Sycamore Cottages only. It is precise, enforceable, relevant to planning and relevant to the development permitted. As such, the condition meets the policy tests as set out at Paragraph 56 of the National Planning Policy Framework.
17. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

S Brook

INSPECTOR