



Appeal Decision

Site visit made on 3 April 2023

by Elaine Gray MA, MSc, IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 June 2023

Appeal Ref: APP/E0915/C/22/3306979

'The Annexe', known as Farndale, Sandy Lane, Broadwath, Heads Nook, BRAMPTON, CA8 9BQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Dr Jennifer Deeble against an enforcement notice issued by Carlisle City Council.
 - The notice was issued on 17 August 2022.
 - The breach of planning control as alleged in the notice is: (a) Non-compliance with Condition 4 set out in planning permission 17/0857, granted on appeal (APP/E0915/W/18/3201371) on 11th April 2019.
 - The requirements of the notice are to: Cease the occupation of the Annexe 'Farndale' until such time as an application for planning permission for the use of the building has been submitted, granted and implemented in full and all relevant planning conditions are complied with.
 - The period for compliance with the requirement is: Three months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. It is directed that the enforcement notice be corrected by:
 - the deletion of the text of the allegation in full, and its substitution with the text: 'Non-compliance with Condition 4 set out in planning permission 19/0540, granted on appeal (APP/E0915/W/20/3247551) on 24 July 2020.'; and
 - the deletion of the text of the requirements paragraph and its substitution with the text: 'Submit in writing to the local planning authority for approval a scheme for i) the permanent closure of the existing access to the highway shown on the Block Plan Drawing no. 3001/2D serving the Farndale Annexe; and ii) for the reinstatement of the highway crossing and boundary, and complete the approved scheme.'
 - The deletion of the text 'Three months' from the period of compliance paragraph and its substitution with the text 'Five months'.
2. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as corrected, is upheld.

The enforcement notice

3. On review of the planning history of the appeal site, I have noted that the enforcement notice allegation incorrectly refers to planning permission, ref: 17/0857, which was granted on appeal, ref: APP/E0915/W/18/3201371, on 11th April 2019. Condition 4 attached to that permission stated: *'Within 3 months from the date of this permission, the existing accesses to the highway shown on the Block Plan As Existing Drawing no. 3001/2 serving the property formerly known as Farndale, shall be permanently closed and the highway crossings and boundaries shall be reinstated in accordance with details have been submitted to and approved in writing by the local planning authority'.*
4. Subsequently, a further planning application, ref: 19/0540, was made seeking to remove the above condition 4. This application was refused on 30 August 2019, but was granted on appeal, ref: APP/E0915/W/20/3247551, in July 2020. The effect of that appeal decision was to issue a new planning permission with a modified condition 4, which required the following: *'Unless within 2 months of the date of this decision a scheme for the permanent closure of the existing access to the highway shown on the Block Plan Drawing no. 3001/2D serving the Farndale Annex and for the reinstatement of the highway crossing and boundary is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented and completed within 3 months of the local planning authority's approval, the occupation of the Farndale Annex shall cease until such time as a scheme is approved and implemented in full.*

Upon completion of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.'

5. This condition is correctly stated within the reasons for issuing the notice. I see from the 2020 appeal decision that the appellant was given the opportunity to comment on this modified condition 4 during that process, and is therefore fully aware of it. For that reason, I am satisfied that this error may be corrected without injustice to the parties.
6. The appeal has been brought on ground (a) alone in this case. However, I have a duty to check whether any steps set out in the requirements are excessive for the purposes of the enforcement notice. The purpose of the notice here is to remedy the stated breach. The requirements should go no further than is necessary to achieve that aim.
7. In this case, the notice requires the appellant to cease the occupation of the annexe until they have obtained and implemented a new planning permission for the use of the building. However, carrying out the requirements of condition 4 would be sufficient to remedy the breach. That being the case, the requirement for a new planning application to be obtained and implemented is excessive, as is the highly onerous need for the appellant to leave her home.
8. Because condition 4 of permission ref: 19/0540 was tied to the date of that decision, I have directed that the requirements of the notice be corrected with

a modified form of condition 4, so that the compliance period runs from the date on which the EN takes force. I am satisfied that no injustice arises from this amendment.

Main Issue

9. When an enforcement notice is issued alleging that there has been a breach of condition, the deemed planning application under ground (a) is to carry out the development subject to the planning permission without complying with the condition being enforced against.
10. The main issue is whether condition 4 of planning permission ref: 19/0540 is reasonable and necessary, having regard to the relevant local and national policies relating to housing in the countryside, and the living conditions of the occupiers of the Farndale annex with regard to accessibility.

Reasons

Planning history

11. In 2013, planning permission, ref: 13/0916, was granted for the construction of the dwelling at Pennine View as a replacement for the bungalow known as Farndale. Condition 8 of this permission required that, within three months of the first occupation of the new dwelling, Farndale was to be demolished. The reason for the condition was to prevent the retention of the bungalow as this would be contrary to Policy H1 of the then Carlisle District Local Plan 2001-2016. As noted above, planning permission was subsequently granted for Farndale to be retained, on condition that its own vehicle access was permanently closed.

Housing in the countryside

12. The local plan is the Carlisle District Local Plan 2015-2030 (CDLP), which was in force at the time of the 2020 appeal. In other words, there has been no change in the relevant policy framework between now and then.
13. The appeal site is in the open countryside for planning purposes, where CDLP Policy HO6 permits new housing under limited circumstances. Pennine View was allowed in the countryside as a replacement dwelling. In paragraph 5.54, the narrative text states that the existing house on the site must be demolished on completion of the new replacement dwelling. In this case, Farndale was allowed to be retained on the basis that it became an annex to Pennine View, thus falling within a single planning unit. In planning terms, it is no longer permitted as an independent dwelling.
14. As it stands, the access that is the subject of the appeal continues to provide a separate and independent access to Farndale and to the detached garage next to it. The two residences are clearly visible from the highway, and the presence of the two accesses inevitably gives the impression that they are independent of each other.
15. The appellant states that if the access is closed, there would be no feasible vehicle access to the single garage and carport. However, if Farndale and its garage were to continue to be accessed independently, this would undermine its purported status as being ancillary to the principle dwelling at Pennine View.

Moreover, there is little evidence that such access is essential, given that Pennine View has a garage and a generous parking area.

16. Furthermore, condition 3 of permission ref: 19/0540 requires that Farndale shall not be sold separately from Pennine View. With the Farndale access intact, the plot could be split into two separate residential planning units with little more than, in practical terms, a new boundary between them. This would clearly be contrary to the provisions of the local plan.
17. Drawing these threads together, I am satisfied that condition 4 is reasonable and necessary to ensure that the development as a whole remains compliant with CDLP Policy HO6.
18. I have had regard to the fact that the neighbouring house, The Shielling, has two entrances to what is a single dwelling. However, I am not aware of the planning history of that property. In any event, there is no evidence that The Shielling also has annexed living accommodation, which means that I cannot draw a direct comparison between the two properties.

Living conditions

19. The appellant, who is disabled with limited mobility, has occupied the annexe since January 2018. Her carer is her son, who lives at the main dwelling at Pennine View with his young family. The gist of her case is that the enforcement of condition 4 would deny her human right to the quiet enjoyment of her home, and her unimpaired access to it. She argues that the requirement to close the access in question would amount to disability discrimination.
20. The entrance to Pennine View gives on to a large, gravelled parking area. The appellant states that, after a recent hospital stay, the ambulance personnel refused to use the Pennine View entrance, saying that it was too difficult to push a wheelchair across to the annexe, presumably due to the gravel.
21. I have taken into account the photographs the appellant submits in support of her appeal, which appear to show her being assisted back to the annexe by ambulance staff. Little context is given for these photographs, but they do reinforce that a hard surface is preferable for wheelchair use over a gravel surface. The appellant also raises the matter of the electric gate at the Pennine View entrance, which she states she could not operate in the event of a power cut.
22. Whilst I acknowledge these difficulties, the electric gate and the gravel surface are choices on the part of the landowner, and not necessities. That being the case, these circumstances are not of sufficient weight to permit a form development that is contrary to adopted policy. Relatively minor adjustments could be made to assist the appellant to use the Pennine View access, and so I do not accept that her human rights are infringed by condition 4.
23. In conclusion on this issue, the disputed condition would not have an unacceptable effect on the living conditions of the occupiers of Farndale, and therefore accords with CDLP Policy SP 6, insofar as it seeks to ensure there is no adverse effect on residential amenity. Conversely, the retention of the access would unacceptably conflict with CDLP Policy HO6. A planning condition to secure the permanent closure and reinstatement of the existing access to Farndale is therefore necessary.

Other matters – ground (a)

24. Condition 4 requires the permanent closure of the access and 'the reinstatement of the highway crossing and boundary'. The appellant questions the use of the term 'reinstatement', arguing that the boundary and grass verge cannot be reinstated when they were not there before. She confirms that Farndale was built in 1937 and this was its original site entrance.
25. A scheme for the works is required to be submitted and approved by the Council. In other words, it is necessary for the appellant to draw up details for how the boundary was to be finished once the access had gone. Whether or not this could be said to be a reinstatement or whether a different term might be more appropriate is a matter of semantics. Crucially, there can be little reasonable doubt over the meaning of the condition, and so this matter has not led me to a different conclusion on the main issues above.
26. The highways department has no objection to retention of the Farndale access, which provides a passing place on the narrow unclassified road. However, they equally have no objection to its removal, and so this matter is neutral in my consideration.
27. With regard to the public interest, there is a need to uphold the operation of the planning system, which includes the requirement for development to accord with the planning policies of the Council's statutory development plan. The development plan is made and applied in the wider public interest. I accept that the Farndale access is more convenient for the appellant, but with adjustments, the Pennine View access would be only slightly less convenient. That being the case, I am satisfied that the public interest is served by the requirements of condition 4.

Conclusion on ground (a)

28. Drawing these threads together, I conclude that condition 4 is reasonable and necessary. Without it, the development would be inconsistent with the requirements of the local plan as a whole.

Other Matters

29. No appeal on ground (g) has been made. However, appellants are entitled to wait until the outcome of an appeal before committing themselves to making arrangements and expenditure for any required works necessary to comply with the notice. The period of time for compliance with the notice should therefore be reasonably commensurate with all that is required in order to achieve compliance. Given that there is a requirement to draw up a scheme of works for approval, followed by the implementation of those works, I consider that five months more reasonable, and reflects the timescale originally set out in condition 4.

Conclusion

30. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice, as corrected, is upheld.

Elaine Gray

INSPECTOR