



Appeal Decision

Site visit made on 6 June 2023

by Elaine Moulton BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/H1033/W/22/3305275

Ashleigh, 157 Park Road, Buxton, Derbyshire SK17 6SW

- 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 Mr G Lester against the decision of High Peak Borough Council.
 - The application Ref HPK/2022/0056, dated 7 February 2022, was approved on 10 June 2022 and planning permission was granted subject to conditions.
 - The development permitted is proposed detached garage building with habitable accommodation at first floor.
 - The condition in dispute is No 7 which states that: *The first floor accommodation, hereby permitted, shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwelling known as 'Ashleigh' at No. 157 Park Road, Buxton. It shall not be sold, let or otherwise occupied as a separate dwelling or unit of accommodation and shall not be used in connection with a trade or business.*
 - The reason given for the condition is: *The establishment of an additional independent unit of accommodation would give rise to an over intensive use of the site and lead to an unsatisfactory relationship between independent dwellings, in accordance with Policies H3 and EQ6 of the High Peak Local Plan 2016 and the National Planning Policy Framework.*
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Decision

1. The appeal is allowed and the planning permission Ref HPK/2022/0056 for detached garage building with habitable accommodation at first floor at Ashleigh, 157 Park Road, Buxton, Derbyshire SK17 6SW granted on 10 June 2022 by High Peak Borough Council, is varied by deleting condition No 7 and substituting it for the following condition:
 - 7) The accommodation hereby permitted on the first floor shall only be occupied as ancillary accommodation to the main dwelling known as Ashleigh, 157 Park Road and/or be used as holiday accommodation managed by, or on behalf of, the occupiers of Ashleigh, 157 Park Road and shall not be occupied as a person's sole or main place of residence at any time. The owners/operators shall maintain an up-to-date register of the names and main home addresses of all occupiers of the first floor accommodation and shall make this information available at all reasonable times to the local planning authority.

Preliminary Matters and Background

2. This appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act). As the appeal was made within six months of the grant of planning permission it falls to be considered under Section 79 of the Act. Section 79 (1) (b) of the Act allows that, on appeal under section 78, the Secretary of State may 'reverse or vary any part of the decision of the local

planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to him in the first instance'. I have determined the appeal on that basis..

3. In reaching its decision to grant planning permission, the Council has concluded that the scale, massing and appearance of the proposed building are acceptable in respect of its impact on the living conditions of nearby residents, and the character and appearance of the area, and would not have an adverse impact on trees. Based on the approved plans and my observations of the site, I have no reason to take a different view and will concentrate my consideration of the appeal on the condition in dispute.
4. The Appellant is seeking to vary the condition in dispute to allow the use of accommodation to be provided at first floor for occasional holiday use, in addition to purposes ancillary to the main dwelling, Ashleigh.
5. The Council has had the opportunity to comment on the proposed holiday use during the appeal but have not done so. In the absence of any evidence to the contrary and noting that there is other holiday accommodation in the area, I have no basis upon which to conclude that the holiday use of the first floor of the building is unacceptable in principle.

Main Issues

6. The main issue is whether the requirements of the condition are necessary and reasonable to protect the living conditions of future occupiers of the first floor accommodation and of the occupiers of Ashleigh, with particular regard to loss of privacy, noise and disturbance.

Reasons

7. Ashleigh is a substantial semi-detached dwelling set in a landscaped plot. It has a reasonably sized front garden, which is well screened from public view. The property is set back in the plot such that the rear garden is of comparable proportions to the front. The appeal building has been permitted to be constructed in a rear corner of the site, at the end of the drive and adjoining the parking area.
8. The condition in dispute states that the accommodation at first floor of the permitted building should be used for purposes ancillary to the residential use of the main dwelling, Ashleigh, due to the concerns set out in the reason for its imposition.
9. The first-floor accommodation as detailed on the approved plans would have a shower room with WC but would not have a kitchen. Therefore, it could not be separately occupied without reliance upon facilities in the main house. Should Nonetheless, whilst the floor space is limited there is the potential to provide all amenities necessary for independent occupation which would be unacceptable due to the close relationship of the accommodation to the main dwelling, Ashleigh.
10. However, the appeal does not seek to enable the permanent, independent occupation of the first-floor accommodation. It is made on the basis that it would be a holiday let, in addition to its uses as ancillary accommodation. On these occasions the accommodation would be likely to be used for short periods

by those visiting the area. A planning condition could restrict the occupation to such holiday guests.

11. The appeal building and main dwelling would be close together. There would not, however, be intervisibility between windows in the proposed first-floor accommodation and the main house or its garden to an extent where, for the short duration of the occupation by holiday guests, the living conditions would be unacceptably compromised.
12. In terms of general disturbance, the joint access would lead to a shared parking area. Holiday guests and the occupants of the main house would be able to come and go independently. Even so, the likely level and transitory nature of vehicle movements associated with either of the units of accommodation would be limited. As such it would not cause any unreasonable level of disturbance to the living conditions of the occupants of either building.
13. Holiday guests would need to pass close to the main house. Nonetheless, I do not consider that the activities associated with the occasional holiday use of the proposed first-floor accommodation would cause undue disturbance to the occupants of Ashleigh. Furthermore, any activity associated with the use outside of the appeal site would not be to an extent that would be noticeable. In the unlikely event that there is an issue with the holiday makers causing disturbance, this could be addressed by the occupiers of the main house who would manage the holiday let.
14. It is unclear as to whether the holiday accommodation would be provided with any outdoor space. However, with the temporary nature of paying guests and the proximity of the property to public open space, I consider that the absence of outdoor garden space would be acceptable.
15. Overall, whilst the use of the permitted building as an independent dwelling would be unacceptable, use as holiday accommodation would not. Leisure visitors, who would occupy the apartments for a short period, would generally have lower expectations in relation to living conditions than permanent residents. Moreover, the occupants of the main house could address any harm to their living conditions through the management or cessation of the use.
16. The appeal building would be sited close to the rear boundary. However, the planning permission enables the occupation of the accommodation provided that it is for purposes ancillary to the dwelling. Any use of the holiday accommodation would be broadly similar. It would not, therefore, materially increase the level of use of the accommodation over that permitted to the extent that noise and disturbance would arise. Furthermore, overlooking of, and light spillage into, gardens is not uncommon in built up areas and will, to some extent, be filtered through landscaping. In this case, the separation distance between the appeal building and the nearest dwelling to the rear is such that overlooking would not be to an unacceptable extent. I therefore consider that the proposal would not have a significantly harmful effect on the living conditions of the occupiers of the adjoining property.
17. I conclude that the removal of condition 7 would be unwarranted having regard to Policy EQ6 of the High Peak Local Plan 2016 (LP) and the National Planning Policy Framework which seeks, amongst other things, high quality design that achieves a satisfactory relationship to adjacent development. Thus, the disputed condition is necessary and reasonable to protect the living conditions

of future occupiers of the first floor accommodation and of the occupiers of Ashleigh. However, for the reasons set out above, the use of the accommodation at first floor for a holiday let is acceptable. Hence, I shall delete the originally worded condition and replace it with a condition which restricts occupation to holiday accommodation in addition to the permitted ancillary use. The effect is to allow the appeal.

18. The Council has also referred to LP Policy H3 in the reason for the condition, however, as this proposal does not relate to new housing development this policy is not relevant to the determination of the appeal.

Other Matters

19. Reference has been made to the original indenture and its provisions about carrying on of trades or businesses and rights of way. However, the existence of any indenture and rights of way are private matters and therefore not relevant to my decision.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting it with a new condition.

Elaine Moulton

INSPECTOR