



Appeal Decision

Site visit made on 17 October 2023

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/V1260/W/22/3311180

27 Warnford Road, Bournemouth BH6 5PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Robert Keith against the decision of Bournemouth Christchurch and Poole Council.
- The application Ref 7-2021-27131-C, dated 26 May 2021, was refused by notice dated 9 June 2022.
- The application sought planning permission for: Alterations and conversion of garage to annexe for use ancillary to main dwelling by varying a condition attached to planning permission Ref 7-2019-27131-B, dated 6 March 2020.
- The condition in dispute is Condition 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: - Dwg no. 100f - Proposed Site Plan - Dwg no. 101 - 1:1250 Location Plan and 1:500 Block Plan - Dwg no. 102 - Existing Elevations and Floor Plan of Outbuilding - Dwg no. 103a - Proposed Elevations and Floor Plan of Outbuilding - Dwg no. 106 Existing Floor Plan of main dwelling (Ground Floor Flat).
- The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.

Decision

1. The appeal is allowed and planning permission is granted for alterations and conversion of garage to annexe for use ancillary to main dwelling by varying a condition attached to planning permission Ref 7-2019-27131-B, dated 6 March 2020 at 27 Warnford Road, Bournemouth BH6 5PG in accordance with the application Ref 7-2019-27131-C, dated 26 May 2021 and subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: - Dwg no. 100f - Proposed Site Plan - Dwg no. 101 - 1:1250 Location Plan and 1:500 Block Plan - Dwg no. 102 - Existing Elevations and Floor Plan of Outbuilding - Dwg no. 1284R1/103b - Proposed Elevations and Floor Plan of Outbuilding - Dwg no. 106 Existing Floor Plan of main dwelling (Ground Floor Flat).
 - 2) The annexe hereby approved shall be occupied and used for purposes ancillary to the residential use of the main dwelling (Ground Floor Flat) and not as an independent residential unit of accommodation.
 - 3) Unless within 3 months of the date of this decision the boundary fence adjacent to Warnford Road fronting the highway and fences subdividing the garden at the development site are permanently removed, the use of the

annexe hereby approved shall cease until such time as this condition is complied with.

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.

Background and Main Issue

2. The appeal site comprises a semi-detached property with a smaller detached building within its garden to the rear. The smaller detached building ('the annexe') was formerly a garage/outbuilding. This building was granted planning permission¹ ('the original permission') as an ancillary annexe to the dwelling at 27 Warnford Road in 2020. Based on the appellant's submissions this development has been completed.
3. As part of the new application², the appellant is seeking to 'vary' Condition 1. This is to substitute approved drawing number: 1284R1/103a with amended drawing: 1284R1/103b. The amended drawing includes a kitchenette within the annexe.
4. The Council is of the view that along with the inclusion of the kitchenette, the degree of physical separation between the annexe and the main dwelling at 27 Warnford Road, and based on its enforcement investigations, the proposal would regularise the unauthorised use of the annexe as an independent residential unit of accommodation.
5. As such, and based on the Council's reason for refusal, the main issues are: a) whether the proposal results in the creation of an independent residential unit of accommodation and the implications of the proposal on the character and appearance of the area, and b) If the proposal would result in the creation of an independent residential unit of accommodation, the effect of this on the integrity of the Dorset Heathlands Special Protection Area ('SPA') and Ramsar Site, and the Dorset Heaths Special Area of Conservation ('SAC').

Reasons

Independent residential unit

6. With the inclusion of the kitchenette, the annexe would incorporate additional facilities which subject to planning permission, could, enable its use as an independent residential unit of accommodation. Equally, with a kitchenette, the annexe can also function for residential purposes that are integral to the residential use of the main dwelling at 27 Warnford Road.
7. Notwithstanding the above, the description of the development on the decision notice of the original permission is: 'Alterations and conversion of garage to annexe for use ancillary to main dwelling.' Consequently, that planning permission did not authorise the creation of a second, separate unit of living accommodation in the curtilage of 27 Warnford Road.
8. Also, Condition 2 of the original permission, which is not disputed, states: 'The garage/outbuilding shall be occupied and used for purposes ancillary to the

¹ Ref 7-2019-27131-B

² Ref 7-2021-27131-C

residential use of the main dwelling (Ground Floor Flat) and not as a separate entity.'

9. It is also clear from the application and the appellant's appeal submissions that the annexe is to function for purposes ancillary to the residential use of the main dwelling.
10. Therefore, even if disputed Condition 1, is amended to allow a kitchenette in the annexe, to occupy the annexe in a way that is not ancillary to the main dwelling could require a further planning permission.
11. It is clearly a matter for the Council to determine whether or not planning permission would be required for however the building would be occupied. The appellant is reminded though that if allowing this appeal under section 73 of the Act I am not authorising a change of use. Rather, I would be allowing the development subject of the permission namely the 'Alterations and conversion of garage to annexe for use ancillary to main dwelling but with a variation to Condition 1'. As such, if the appellant or anyone else wishes to use the annexe in a way that does not fall under that description and is not authorised by that permission a fresh planning permission could be required.
12. Moreover, as I am not considering a material change of use, I have not addressed the comments and evidence in the submissions and representations about whether or not an independent unit here would be acceptable in planning terms, as those matters are not before me.
13. There is sufficient space within the annexe to accommodate the kitchenette and this would not affect the external appearance of this building.
14. In light of the above, the 'varying' of disputed Condition 1, to allow a kitchenette in the approved annexe would not result in the creation of an independent residential unit of accommodation and also not harm the character and appearance of the area. As such, the proposal does not conflict with the design aims of Policies CS6 and CS41 of the Bournemouth Local Plan: Core Strategy (October 2012) ('CS').
15. In light of the above, the disputed Condition 1 can be amended to reflect the amended drawing submitted under application Ref 7-2019-27131-C, dated 26 May 2021.
16. CS Policy CS21 relates to the provision of new housing, CS Policy CS38 deals with minimising pollution, CS Policy CS16 refers to parking standards for new development and CS Policy CS18 seeks to promote cycling and walking in new developments. Given the nature and scope of the proposal, these policies are not directly relevant.

Dorset Heathlands SPA and Ramsar Site and Dorset Heathlands SAC

17. The appeal site is within 5km of the Dorset Heathlands SPA and Ramsar Site and Dorset Heathlands SAC. These sites host protected priority habitats and species.
18. Natural England advises that additional residential development within 5km of the Dorset Heathland area is likely to have a significant effect on the Dorset Heathlands either alone or in combination with other proposals.

19. The Council's Dorset Heathland Supplementary Planning Document clarifies that in order to enable Councils to grant planning permission for proposals for a net increase in dwellings within the 400 metres to 5km heathland area, applicants are required to contribute to Strategic Access Management and Monitoring ('SAMM') in this area by legal agreement or through a payment prior to the grant of planning permission as an upfront payment.
20. Notwithstanding that the appellant has provided a completed Unilateral Undertaking ('UU') to secure the required financial contribution towards SAMM, because the proposal would not result in the creation of a new dwelling, this would not have any effect on the Dorset Heathlands SPA and Ramsar Site and Dorset Heathlands SAC either alone or in combination with other proposals. Accordingly, I find no conflict with CS Policy CS33, which states that development will not be permitted unless it can be ascertained that the development will not lead to an adverse effect upon the integrity, directly or indirectly, of the Dorset Heaths international designations. I therefore afford no weight to the UU in reaching my decision.

Conditions

21. Condition 1 of my Decision includes the originally approved and amended drawings. This is necessary in the interests of certainty. In respect of any other conditions on the original permission, the Planning Practice Guidance makes clear that when granting planning permission under section 73 of the Act they should be repeated on decision notices unless they have already been discharged. In this case 'condition a' specified on the original permission relates to the time-limit for implementing it. As the original development has been started, it is not necessary for me to impose this condition. As already stated, Condition 2 of the original permission ensures that the approved building shall be occupied and used for purposes ancillary to the residential use of the main dwelling (Ground Floor Flat). Therefore, I have imposed a similar condition (Condition 2) for the original reason.
22. Condition 3 of the original permission states: 'The boundary fence adjacent to Warnford Road fronting the highway and fences subdividing the garden shall be removed prior to occupation of the garage/outbuilding as ancillary living accommodation. Thereafter, no form of subdivision between the access to the main dwelling and the outbuilding shall be erected at any time.' Based on the information before me, this condition has not been complied with. Although the appellant has suggested that the boundary treatments provide amenity space and privacy to both the annexe and host property. I have limited evidence to substantiate this. In any event, the application before me does not relate to this condition. As such, I have also imposed a similar condition (Condition 3) for the original reason. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.
23. Under section 73 of the Act, I can also impose new conditions. To this end, I have had regard to those suggested by the Council. Due to the nature and scope of the application and because I have not been provided with any clear reasons or justification to show them to be necessary to make the proposal acceptable in planning terms, I have not imposed the condition restricting the addition of further doors, windows or rooflights to the annexe and conditions requiring the removal of the annexe from the Council Tax Register, the deletion

of its postal address and a requirement that the annexe should not have its own waste and recycling bin provision.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed.

M Aqbal

INSPECTOR