The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2023

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd November 2023

Appeal Ref: APP/C1435/W/22/3309413
Park Lodge, Lye Green, Crowborough TN6 1UU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Ryan Saunders against Wealden District Council.
- The application Ref WD/2022/1174/F, is dated 27 April 2022.
- The development proposed is described as 'a full application for the demolition of two existing buildings and the erection of a single replacement outbuilding remaining subservient to the main dwelling.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ryan Saunders against Wealden District Council. That application is the subject of a separate decision.

Main Issues

3. This appeal is against the Council's failure to give notice of a decision. It results from a validation dispute between the main parties regarding the fee and location plan. An assessment of the scheme's planning merits has now been undertaken by the Council and a putative reason for refusal provided.

4. Therefore, the main issues are a) whether or not the planning application should have been validated by the Council; and b) in the event that I find it should have been validated, the effect of the proposal on the character and appearance of the wider area.

Reasons

Validation

The Location Plan

5. Article 7 of the Town and Country (Development Management Procedure) (England) Order 2015 (DMPO) sets out that an application for planning permission must be accompanied by a plan (my emphasis) which identifies the land to which the application relates and any other plans, drawings and information necessary to describe the development which is the subject of the application. The plans or drawings must be drawn to an identified scale and, in the case of plans, must show the direction of North.

6. The application as submitted comprised, amongst other things, a 'Location Plan/Block Plan' (Reference: PHA-PL-001) and a 'Proposed Block Plan' (Reference: PHA-PL-005). The first edged in red the two buildings to be demolished and the second outlined in red where the new building was to be erected. Whilst there was clearly some overlap between the two red lines, they did not cover exactly the same areas. As such, rather than there being a plan which identified the land to which the application related, there were two plans which needed to be considered simultaneously to confirm the extent of the land encompassed by the application.

7. On 25 July 2022, the Case Officer requested an amended location plan with a single red line to encompass both the buildings to be demolished and the new building to be erected, and thereby clearly identify the full extent of the application site. It was initially agreed by the appellant that an amended location plan would be provided but one was not submitted.

8. On a straightforward reading of the requirements, the appellant has not complied with them. Whilst there was a preparedness to amend the location plan and the Council was happy to accept such an amendment, one was not submitted. Whilst this could be considered a small, technical breach, I cannot conclude that the Council was wrong in its assessment and request.

Fee

9. On 25 July 2022, the case officer also advised that as the proposal was considered to comprise a change in the use of the land, the fee should be based on that rather than for the square metreage of the new building.

10. It is the appellant's contention that the two buildings to be demolished are being used as offices and that this use was authorised by Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). Class R allows agricultural buildings to change to a flexible use, within Classes B8 (storage or distribution), Class C1 (hotels), and Class E (commercial, business or service) without the need to apply for planning permission from the Council.

11. The Council queries whether the permitted change was permissible and also whether it has been implemented. However, even if I accept that it was permissible. and the buildings are being used in accordance with the GPDO, I must still consider the use of the new building that was being proposed.

12. The application form describes the new building as '….a single replacement outbuilding remaining subservient to the main dwelling'. An outbuilding is usually taken as meaning a building which is separate from but is in some way connected with a main or principal building. Subservient can be taken as having lesser status either physically or in how it is used or operates or both.

13. A 'Supporting Statement' also accompanied the application. Under the heading 'Background and Proposal' the statement refers to the buildings as functioning as a 'home office' and that the aim of the proposal is to create a modern 'home office'. It then goes on to confirm that the home office '…would remain ancillary to the existing dwelling'. There are further references to the new building being a home office and it being ancillary to the dwelling.

14. While the terms 'incidental' and 'ancillary' are often used interchangeably in planning, despite meaning slightly different things, their meanings are

nevertheless held to be those that one would consider to be ordinarily associated with the primary use of the property. Thus, the use of the term 'ancillary' would be consistent with the application form identifying the proposed building as being 'subservient' to the main dwelling. Collectively the above leads me to the conclusion that what was being sought was a home office that was directly connected with the use of the main dwelling.

15. Under Class R of the GPDO, the buildings would be independent of any residential purposes and so would not be 'ancillary' or in any way linked to the dwelling. Such a building could be used by any person or business unconnected with the dwelling and the use and operation would not be expected to be limited or constrained or in any way restricted by a primary residential use. Thus, it would not be expected to have the same level and character of use as a home office.

16. That a home office might have lesser effects on an area than an unfettered building used just for business/commercial activities does not alter the fact that they are different and going from one to the other represents a change. Similarly, that an office use within Class E is one that needs to be capable of being undertaken in a residential area does not prevent it from having different characteristics from a home office. I am also mindful that what was approved by Class R was a flexible use that does not just limit the existing buildings to an office use. Therefore, the potential scale and nature of the use of the buildings permitted by Class R is very different from that of a home office.

17. Furthermore, the new building would encompass an area of land between the two existing buildings. It is not clear to me that this represents the curtilage to the existing buildings and that it was identified under the Class R notification process as being part of the 'site'. This part of the site may have retained its original use, which the appellant considers to be agricultural. A home office use would be materially different from an agricultural use.

18. Drawing all of the above together, I find that what was proposed was very different from the existing buildings and land, whether they have changed under Class R or not. Accordingly, what is involved would represent a material change in use and so the Council was entitled to seek the additional fee.

Conclusion

19. My conclusion is that the appeal should fail on the first main issue. Consequently, it is not necessary for me to consider the planning merits of the case, as this would not alter the outcome of the appeal.

Conclusion

20. For the reasons set out above, I conclude that the appeal should be dismissed.

Stewart Glassar

INSPECTOR