



Appeal Decision

Site visit made on 3 April 2024

by R C Kirby BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th May 2024

Appeal Ref: APP/A4710/W/23/3330335

1 Jagger Green Hall, Jagger Green Lane, Holywell Green, Elland, Calderdale HX4 9DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by MCN Construction against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref is 23/00806/REM.
 - The application sought planning permission for demolition of existing buildings and construction of replacement barn to include three new dwellings including the creation of associated gardens, garden walls and vehicular parking/garages. (Amended description and plans) without complying with a condition attached to planning permission Ref 20/00645/FUL, dated 13 April 2022.
 - The condition in dispute is No 2 which states that: *Notwithstanding the approved plans, the permission hereby granted shall not include the garages indicated on drawing 2609-20-35 rev D.*
 - The reason given for the condition is: *In the interests of visual amenity and the setting of Listed Buildings and to ensure compliance with policies BE1 and BE18 of the Replacement Calderdale Unitary Development Plan.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the course of the appeal the main parties' views were sought in respect of the Finney¹ judgment and the Fiske judgment². The comments received have been taken into consideration.
3. The appellant is seeking to remove the disputed condition so that garages can be constructed to plots 8 and 10 of the approved scheme. The application was made under section 73 of the Town and Country Planning Act 1990 (as amended). The effect of an approval of an application made under section 73 is to grant a new planning permission, but with the same description of the development as originally permitted.

¹ John Leslie Finney v Welsh Ministers & Carmarthenshire County Council, Energiekontor (Uk) Limited

² Fiske v Test Valley BC & Woodington Solar Limited.

Main Issues

4. Whilst the reason for the disputed condition makes reference to visual amenity, the Council has indicated that the visual amenity and landscape character of the surrounding environment would not be harmed by the proposed garages.
5. Accordingly, the main issues are:
 - whether the disputed condition is reasonable and necessary to preserve the nearby listed building, its setting or any features of special architectural or historic interest which it possesses, and
 - whether an application under section 73 is the appropriate mechanism to secure planning permission in this case.

Reasons

Listed Building

6. The appeal site comprises a terrace of 3 dwellings, backing on to Jagger Green Lane, in an elevated location. They are located close to a new build residential scheme which is located to the front of the building within a rural location. The area is characterised by stone buildings, set close to the road and largely enclosed by stone walls. The dwellings on the site have been constructed and appear occupied. The garages to which the disputed condition relates have not been constructed.
7. In close proximity to the terrace is the Grade II listed building known as 1,2,3 and 4 Jagger Green Hall constructed of stone with a stone slate roof dating from the late 17th century with 18th century additions. The listed building is enclosed by a stone wall from the appeal site, however its close proximity and interrelationship means the appeal site forms part of its setting. In this regard the absence of built form to the side of plot 10 as well as part of the access road to the front of the terrace allows clear views of the side and rear elevation of the listed building contributing to its significance as a building of architectural and historical interest.
8. It is understood that the terrace of dwellings replaced an earlier agricultural building on the site that was historically associated with the listed building. The terrace has been designed with an irregular fenestration pattern and is of a simple design, however the presence of chimney stacks and the subdivision of the rear gardens give the building a residential, rather than agricultural appearance.
9. The proposed garage to the side of plot 8 would be located away from the listed building and would not be viewed in the same context because of the built form of the terrace in between the respective buildings preventing any intervisibility. It would be of a modest scale with a cat slide roof and would be in keeping with its rural surroundings, a matter that is not in dispute. A garage in this location would preserve the setting of the listed building.
10. The garage to the side of plot 10 would however partly obscure views of the side of the listed building when viewed from the public highway, resulting in a modern addition which would erode the spaciousness to the side of the building and restrict views of the building from the road. The new garage would be

harmful to the designated heritage asset's significance through harmful development within its setting.

11. The harm that would be caused to the significance of the designated heritage asset would be less than substantial, however the identified harm is a matter to which I am required to give great weight. The benefits of the garage to plot 10 would be a largely private benefit for the occupiers of that property, as opposed to a public one.
12. For the above reasons, the proposal to allow a garage to the side of plot 10 would not preserve the nearby listed building, its setting or any features of special architectural or historic interest which it possesses. Accordingly, there would be conflict with Policy HE1 of the Calderdale Local Plan 2018/19 – 2032/33 which requires development proposals to conserve, and where appropriate enhance, the historic environment. There would also be conflict with the conserving and enhancing the historic environment objectives of the National Planning Policy Framework. The statutory test set out in S66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 would not be met.
13. I note the examples of garages granted planning permission within the Green Belt and within the curtilage of listed buildings provided by the appellant, however I am not aware of the circumstances that led to planning permission being granted for these developments. The garages for the new housing to the rear of the appeal site are not comparable, either in design or form to that before me. Each application and appeal proposal are determined on their merits and the presence of similar development elsewhere does not alter my conclusions.
14. For the above reasons I conclude that the disputed condition is reasonable and necessary in respect of the garage associated with plot 10 in order to preserve the setting of the listed building 1,2,3 and 4 Jagger Green Hall. The condition is not however reasonable or necessary for the garage to plot 8 for the reasons set out above.

Scope of Section 73

15. Given my findings I have considered granting a new planning permission for a garage to the side of plot 8. However, in this regard I am mindful of both the Finney and Fiske judgments which have established that an application under section 73 cannot be used to obtain a permission that would require a variation to the terms of the 'operative' part of the planning permission, that is, the description of the development for which the original permission was granted.
16. In this case the description of development in the planning permission refers to 'garages' in the plural sense. Given my findings above that a singular garage would only be acceptable on the appeal site as opposed to 'garages', the granting of a new planning permission would create a conflict with the operative part of the original planning permission. To grant a new planning permission would be beyond the scope of an application under section 73 and in these circumstances a fresh planning application would be required.
17. I appreciate that this may be frustrating to the appellant however I am unable to grant planning permission for a single garage for an application made under section 73.

Conclusion

18. My findings that only a singular garage on the appeal site would be acceptable conflicts with the operative part of the planning permission and is therefore beyond the scope of an application made under section 73. A fresh planning application would be required. Consequently, the appeal is dismissed.

RC Kirby

INSPECTOR