



Appeal Decision

Site visit made on 14 May 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

Appeal Ref: APP/J1535/W/23/3332372

Rectory Barn, Church Lane, off Fyfield Road, Ongar CM5 0HQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Cheryl Fry against the decision of Epping Forest District Council.
 - The application Ref EPF/1180/23 was approved on 14 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is to reduce size of house, including removal of first floor and lower height of roof.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be completed within 6 months from the date of this decision.
 - The reason given for the condition is: To ensure the works are completely in a timely matter, given the enforcement investigation at this site and to comply with the requirements of Section 91 of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is allowed and planning permission Ref EPF/1180/23 to reduce size of house, including removal of first floor and lower height of roof at Rectory Barn, Church Lane, off Fyfield Road, Ongar CM5 0HQ granted on 14 July 2023 by Epping Forest District Council, is varied by deleting condition 1 and substituting it with the following condition:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Background and Main Issue

2. Permission was originally granted for an agricultural building to be converted to two dwellings on the site of Rectory Barn in August 2014¹. The conversion was not implemented in accordance with the approved plans and the Council served an enforcement notice in March 2017². An amended scheme for a dwelling was subsequently permitted by the Council in November 2018³ (the 2018 scheme). This scheme was, however, not implemented. A proposal for a two-storey dwelling was refused permission by the Council in October 2022⁴. The 2018 scheme is the same as the permission the subject of this appeal.
3. Condition 1 of the planning permission the subject of this appeal prescribes that the works to the existing building must be completed within six months;

¹ EPF/1388/14

² ENF/416/16

³ EPF/1900/18

⁴ EPF/1278/22

namely by 14 January 2024. Such works would comprise the removal of the upper floor of the dwelling and the reconstruction of its roof.

4. Therefore, the main issue is whether condition 1 meets the tests set out in the National Planning Policy Framework and Planning Practice Guidance (PPG), specifically whether it meets the tests of being necessary, relevant to planning, relevant to the development to be permitted, enforceable, precise and reasonable in all other respects.

Reasons

5. It is apparent from the site history that an unauthorised dwelling has been present on the site for a substantial period of time. Permission was granted by the Council for the 2018 scheme over five years ago to resolve this situation, however this was not implemented.
6. The PPG notes that conditions requiring a development to be carried out in its entirety will fail the test of necessity by requiring more than is needed to deal with the problem they are designed to solve. It goes on to say that such a condition is also likely to be difficult to enforce due to the range of external factors that can influence a decision whether or not to carry out and complete a development. The condition does not accord with the advice provided in the PPG.
7. This proposal is acceptable in its own right and stands as alternative scheme to that which could be implemented in order to create an authorised dwelling on the site. I note the Council's concerns regarding the length of time since the planning breach. However, condition 1 does not meet the tests in the Framework and it remains within the gift of the Council to commence enforcement proceedings to remedy any breach of planning control.
8. Accordingly, the proposed condition is not necessary, reasonable or enforceable. It therefore fails the tests set out in the PPG and should not be imposed.

Conditions

9. I have amended condition 1 to be the standard three year period to implement the planning permission. This decision is to be read in conjunction with the original planning permission granted by the Council and the remaining conditions of that document still apply.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed. I vary the planning permission by deleting the disputed condition and substituting it with the replacement condition 1 as set out above.

Nick Bowden

INSPECTOR