



Appeal Decision

Site visit made on 1 July 2024

by J Pearce MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th July 2024

Appeal Ref: APP/Y9507/W/23/3329189

Woodlands Cottage, Titnore Lane, Pot Lane, Ferring, West Sussex BN13 3UG

- 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 Will Somerset against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/23/01828/CND.
 - The application sought planning permission for the change of use of former stables to provide ancillary residential accommodation without complying with a condition attached to planning permission Ref SDNP/22/05624/FUL, dated 27 January 2023.
 - The condition in dispute is No 5 which states that: Upon the commencement of the development hereby approved, planning permission SDNP/21/06049/HOUS shall not, either in full or part thereof, be implemented. This present planning permission (SDNP/22/05624/FUL) may not be implemented if, at the time when such implementation would take place, any part of planning permission SDNP/21/06049/HOUS has already commenced.
 - The reason given for the condition is: To ensure proper planning of the site and avoid a disjointed form of development.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of former stables to provide ancillary residential accommodation at Woodlands Cottage, Titnore Lane, Pot Lane, Ferring, West Sussex BN13 3UG in accordance with the application Ref SDNP/23/01828/CND, without compliance with condition number 5 previously imposed on planning permission Ref SDNP/22/05624/FUL dated 27 January 2023 and subject to the conditions set out in the attached Schedule.

Background and Main Issue

2. The appeal site comprises a semi-detached two-storey dwelling with a detached single-storey outbuilding to one side. Planning permission has been granted for a single-storey side extension to the dwelling attaching to the end of the outbuilding under reference SDNP/21/06049/HOUS. Planning permission has subsequently been granted under reference SDNP/22/05624/FUL for the change of use of former stables to provide ancillary residential accommodation, subject to conditions. This included, at condition 5, that the approved single-storey side extension could not be implemented in the event that the permission for the change of use of the stables is implemented or, if the single-storey side extension is implemented, then the change of use of the stables could not be implemented. Application reference SDNP/23/01828/CND sought

to remove condition 5 in order to allow for both permissions for the side extension and the change of use of the stable to be implemented.

3. The main issue therefore is whether the condition is necessary, enforceable and reasonable to ensure proper planning of the site and avoid a disjointed development.

Reasons

4. It would be physically possible for both developments approved under the original permission reference SDNP/22/05624/FUL for the change of use of the stables building and permission reference SDNP/21/06049/HOUS for the link extension to be constructed. The condition seeks to ensure that only one of the two approved schemes can be implemented. This is tantamount to a revocation of a planning permission. However, a planning permission can only be revoked by the planning authority or the Secretary of State following the process (with provisions for compensation) set out under s97 and s100 of the Town and Country Planning Act 1990 (the Act). Accordingly, a condition cannot formally revoke an extant planning permission and as a result is neither enforceable nor reasonable. Whether a planning obligation can be used instead is outside the remit of this appeal.
5. The condition seeks to ensure that development at the site accords with Policy SD31 of the South Downs Local Plan 2019 (SDLP). This aims to protect the limited supply of small and medium-sized homes in the National Park by permitting proposals that do not increase the floorspace of the existing dwelling by more than approximately 30% unless there are exceptional circumstances. Nevertheless, while there may be sound planning reasons for limiting the floor space, I am not satisfied that condition 5 meets the tests as set out in Paragraph 56 of the National Planning Policy Framework (the Framework) for the reasons set out above.

Conditions

6. I have considered the conditions having regard to the tests in the Framework. I have imposed the conditions from the original permission, including the time limit for commencement. I have adjusted the wording of some conditions to improve precision.

Conclusion

7. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

J Pearce

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin before 27 January 2026.
- 2) The development hereby permitted shall be carried out in accordance with drawing numbers 1.00, 1.02, 2.02 and 2.03.
- 3) The materials used in the construction of the development hereby approved shall be as detailed within the permitted application particulars and shall thereafter be retained.
- 4) The development hereby permitted shall be used solely for purposes incidental to the occupation and enjoyment of the dwelling known as Woodlands Cottage, and shall thereafter not be used or occupied separately.
- 5) The development hereby permitted shall be undertaken in accordance with the submitted Ecosystems Services Statement, and section 5.7 of the Bat Survey Report by Sylvatica Ecology Ltd. Prior to occupation of the hereby permitted development, the four bat boxes shall be affixed to trees within the curtilage of Woodlands Cottage.
- 6) No external lighting shall be installed to the building or anywhere within the site. This exclusion shall not prohibit the installation internal lighting or of sensor-controlled security lighting of 1,000 lumens or less, which shall be designed and shielded to minimise upwards light spillage.

End of Schedule