
Appeal Decision

Site visit made on 10 July 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/A4710/W/24/3341530

3A Heath Hall, Halifax, Calderdale HX1 2PN

- 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 Mr Keanu Mazlomi against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 23/00811/FUL was approved on 4 January 2024 and planning permission was granted subject to conditions.
 - The development permitted is basement conversion to form one bedroom apartment.
 - The condition in dispute is No 2 which states that: There shall be no commencement of any further works to the development hereby approved, or first occupation thereof, until the additional, non-approved, entrance porch has first been demolished and removed in its entirety from the site, and the host building has been reverted back to its previous condition. Any remedial works necessary to return to host building to its previous condition shall be undertaken prior to the first occupation of the dwelling.
 - The reason given for the condition is: To ensure that the development is built in accordance with the approved plans in the interests of protecting visual amenity and the character of the Savile Park Conservation Area, in accordance with Policies BT1 and HE1 of the adopted Calderdale Local Plan, Chapters 12 and 16 of the National Planning Policy Framework, and Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
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Decision

1. The appeal is allowed and planning permission Ref 23/00811/FUL for basement conversion to form one bedroom apartment at 3A Heath Hall, Halifax, Calderdale HX1 2PN granted on 4 January 2024 by Calderdale Metropolitan Borough Council, is varied by deleting condition 2.

Application for costs

2. An application for costs has been made by the Council against the appellant, Mr Keanu Mazlomi. This is subject to a separate decision.

Preliminary Matters

3. At the time of my site visit, the conversion works were complete and the apartment appeared to be occupied. Also, an external porch had been built, which encloses the area in front of the main entrance door and front lounge window of the new basement apartment.

Background and Main Issue

4. Planning permission has been granted, subject to conditions, for the conversion of the basement of the host property to a one bedroom apartment.

5. The condition in dispute relates to the addition of a new entrance porch to the appeal property. The condition sought to prevent further works from being carried out, or the first occupation of the proposed new apartment, until the entrance porch that was being constructed at the time of the consideration of the planning application, was demolished and removed in its entirety from the site, and that the host building was subsequently reverted back to its previous condition before the porch works commenced.
6. While the appellant seeks the removal of the condition because they consider the porch is acceptable in terms of its design and appearance and could be screened from view, it is necessary for me to consider whether the condition meets the relevant tests for conditions, as set out in paragraph 56 of the National Planning Policy Framework (the Framework).
7. Having regard to the above, the main issue in this appeal is whether the condition is valid and if it is, whether it meets the 'six tests' found in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG).

Reasons

8. In order to be valid a condition must fulfil a planning purpose, fairly and reasonably relate to the development being permitted and not be so unreasonable that no reasonable authority could have imposed them, which is 'Wednesbury' unreasonable¹.
9. The appeal proposal, as referred to in the description of development, relates to the conversion of the basement to a one bedroom apartment and does not include the erection of a porch to the host building. Also, the approved plans for the development² do not include details of a porch to the exterior of the building. The only external alterations shown on the approved plans include the addition of a new window to serve the lounge of the apartment. Therefore, planning permission was not sought for, nor was consent granted for a porch at the appeal property.
10. Furthermore, condition 1 of the permission expressly requires the development to be carried out in full accordance with the approved plans detailed in the decision notice. Thereby, irrelevant of when the porch was constructed, as it did not form part of the appeal proposal the condition to remove it was not a valid condition, as it did not fairly and reasonably relate to the development being permitted.
11. Even though the Council discussed the alleged unauthorised porch and imposition of a condition to remove it with the appellant's agent in advance of determining the planning application, a condition should not be imposed to seek to remedy a pre-existing problem that does not form part of an application proposal. Thereby, such does not justify a condition which is not valid.
12. In view of the above, as I find that the condition is not valid in terms of the legal tests, it is not necessary for me to go on to consider whether the

¹ Associated Provincial Picture Houses v Wednesbury Corporation [1948] (Court of Appeal)

² Planning permission ref 23/00811/FUL includes Plan ref: 2048-23-002 Revision A (Location & Block Plan), dated July 2023 and received by the Local Planning Authority on 03/01/2024; Plan ref: 2048-23-001 Revision A (Existing and Proposed Plans & Elevations), dated July 2023 and received by the Local Planning Authority on 19/12/2023.

condition would meet the six tests set out in the Framework and PPG in this instance.

Other Matters

13. The appellant has sought advice on whether or not the porch extension would be classed as permitted development³. However, this is not a matter which falls to be considered in this appeal.
14. That there may or may not have been agreement between the appellant's agent and the Council about the wording of the condition is not of relevance to the main issue in this appeal. Notwithstanding such, the condition in dispute is not a pre-commencement condition and so there was no requirement for the Council to gain the appellant's written agreement to the terms of the condition⁴ in any case.

Conclusion

15. For the reasons given above, I conclude that the appeal should succeed and I vary the planning permission by deleting the disputed condition.

C Billings

INSPECTOR

³ In reference to Schedule 2, Part 1, Class D or any other part of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended.

⁴ Section 100ZA(4-6) of the Town and Country Planning Act 1990, as amended and, The Town and Country Planning (Pre-commencement Conditions) Regulations 2018.