



Appeal Decision

Site visit made on 12 November 2024

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/F0935/W/24/3345962

Pennine View, Sandy Lane, Broadwath, Heads Nook, Brampton CA8 9BQ

- 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 73A of the Town and Country Planning Act 1990 for the development of land without complying with conditions imposed on the approval of reserved matters or details pursuant to a previous planning permission.
 - The appeal is made by Mr Robert Deeble against the decision of Cumberland Council.
 - The application Ref is 23/0804.
 - The application sought planning permission for erection of replacement dwelling (revised application) without complying with a condition attached to planning permission Ref 17/0857, dated 11 April 2019.
 - The condition in dispute is No 4 which states that:
Unless within 2 months of the date of this decision a scheme for the permanent closure of the existing access to the highway shown on the Block plan Drawing no. 3001/2D serving the Farndale Annex and for the reinstatement of the highway crossing and boundary is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented and completed within 3 months of the local planning authority's approval, the occupation of the Farndale Annex shall cease until such time as a scheme is approved and implemented in full.
Upon completion of the approved scheme specified in this condition, that scheme shall thereafter be retained.
In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been fully determined.
 - The reason given for the condition is: to ensure that a scheme for closing the existing access is submitted, approved and implemented in full so as to make the development acceptable in planning terms.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission was granted in 2012¹ for a replacement dwelling, known as 'Pennine View', partly on the site of an existing bungalow, 'Farndale'. A subsequent proposal granted permission² for the position of the new dwelling to avoid the site of the bungalow. However, condition 8 required that within 3 months of the occupation of the new house, Farndale was to be demolished.
3. An application³ was then submitted to remove this condition, thereby creating an additional, rather than a replacement dwelling which was dismissed on

¹ Ref 12/0948

² Ref 13/0916

³ Ref 16/0196

appeal⁴. A subsequent application⁵ sought to vary condition 8 of the permission to retain Farndale as ancillary accommodation to Pennine View. This was allowed on appeal⁶ subject to several conditions, including condition 4 which required the existing accesses to the highway for Farndale to be permanently closed and the highway crossings and boundaries to be reinstated.

4. A later planning application⁷ sought to not comply with condition 4. This was refused and an appeal⁸ submitted. The inspector in the appeal noted that as the access had not been closed within 3 months of the date of the permission, the condition had been breached. Therefore, they allowed the appeal, issued a new permission, and modified condition 4 requiring the works to be done within 2 months of the decision notice⁹.
5. The access remains open. This appeal is a result of the Council refusing to grant permission¹⁰ for the replacement dwelling without complying with condition 4.
6. Therefore, the main issues are whether the disputed condition is necessary having regard to the location of housing in the countryside; and the living conditions of the occupiers of the Farndale annex with regards to accessibility.

Reasons

Housing in the countryside

7. Windfall housing development, as set out in Policy HO2 of the Carlisle District Local Plan (CDLP) sets out that in rural areas, new housing will only be acceptable where it is within or on the edge of settlements. Policy HO6 of the CDLP provides for new housing in the open countryside subject to special circumstances, which includes replacement dwellings.
8. Pennine View was permitted¹¹ in the open countryside as a replacement dwelling. Whilst Policy HO6 of the CDLP requires the removal of the original dwelling, in this case, Farndale was allowed¹² to be retained as ancillary accommodation for a dependent relative.
9. Sandy Lane is a narrow country lane fringed by grass verges and established hedgerows. Pennine View is the first property on entering the lane and I saw that it is a sizeable, two-storey dwelling, with a large, detached garage to one side. It has brick piers and tall gates leading into an extensive parking area with a gravel surface to the front. A short distance away is Farndale with its hipped roof and traditional character. This has a separate vehicular access fronted by brick walls and piers, with a drive and detached garage.
10. From what I observed from Sandy Lane, Pennine View and Farndale appear as independent residential properties, despite both having a cream-coloured

⁴ APP/E0915/W/16/3160411

⁵ Ref 17/0857

⁶ APP/E0915/W/18/3201371

⁷ Ref 19/0540

⁸ Ref APP/E0915/W/20/3247551

⁹ 6 July 2020

¹⁰ Ref 23/0804

¹¹ Ref 12/0948 and Ref 13/0916

¹² APP/E0915/W/18/3201371

finish. This is reinforced by the distance between the two properties and there being two, separate access points of differing characters.

11. Condition 3 of the most recent permission¹³ states that Farndale must not be occupied other than as ancillary accommodation to Pennine View and shall not be sold separately or occupied as a separate dwelling. Whilst there is no dispute that some properties have more than one access, in this case, Farndale retaining a separate and independent access undermines the principle and purpose of the condition. Moreover, the existing permission is that Farndale is an annex to the replacement dwelling, Pennine View, to accord with the CDLP.
12. Therefore, I conclude that retaining a separate access at Farndale would conflict with CDLP Policies HO2 and HO6 regarding housing in the countryside. A planning condition requiring the closure of the existing access to Farndale is consequently necessary.

Living conditions

13. The evidence states that the retention of the access would allow the appellant, who is registered disabled, to remain 'relatively mobile' and access their motor vehicle. Whilst I did not see a vehicle at Farndale when I visited the site, there is a tarmac drive and rear garage at the property. Equally, I noted the extensive area that is available for the manoeuvring and parking of several vehicles to the front of Pennine View and side of Farndale, as well as there being a large garage.
14. Whilst the existing gravel to the front may not provide an even surface, the ground is flat. Therefore, it would be possible to continue the paving that already exists around both Pennine View and Farndale to the space between the two properties to create a level and accessible surface. Furthermore, as there is no subdivision of the site, this would provide the easiest and quickest way for the occupiers to access either property. These adaptations would enable an effective connection to and from the annex for the support of an elderly relative. Whilst this would involve some expenditure, this would not be unexpected when it was decided to develop the site and retain Farndale as a means of providing appropriate mutual support. I therefore find that there is limited substantive evidence that not retaining the access would make it more difficult, or less convenient, for access between the properties, or it would reduce the independence of the occupier of Farndale.
15. The appellant has referred to CDLP Policy HO10, housing to meet specific needs, which was considered when permission was granted for Farndale to become an annex to Pennine View. However, whilst the retention of the property has enabled the mutual support of the elderly relative, limited substantive evidence has been provided as to the needs of the occupier of Farndale, the level of support required, and how much the relative has deteriorated since permission was granted in 2019. Moreover, this proposal is not revisiting the principle of an established annex to Pennine View as a means of providing a supportive living environment.
16. Consequently, I see no reason why seeking to close the access would undermine national policy that supports independent living and providing

¹³ Ref APP/E0915/W/20/3247551

accessible and adaptable homes. This is because good vehicular access would be retained at the site. Based on the evidence, this would not limit the accessibility of the annex and effect the living conditions of the occupier of Farndale.

17. Therefore, I conclude that the retention of the access would conflict with CDLP Policies HO2 and HO6, and a planning condition which requires the permanent closure of the access, and the reinstatement of the boundary is necessary.

Other Matters

18. I have had due regard to the public sector equality duty (PSED) set out under s149 of the Equality Act 2010. The development is required to meet the needs of a person who has protected characteristics due to their age and disability. However, the harm that not requiring the permanent closure of the access to Farndale outweighs its benefits in terms of eliminating discrimination against persons with the protected characteristics of age and/or disability, advancing equality of opportunity for those persons and fostering good relations between them and others as well as the need to eliminate harassment and victimisation.
19. I have also taken into consideration the Human Rights Act (HRA), 1998, and recognise that the dismissal of the appeal would interfere with some of the appellant's rights under Article 8 of the First Protocol. Article 8(1) states that everyone has a right to respect for their private and family life, their home and their correspondence. Consequently, I consider that it is in the wider public interest to interfere with the qualified rights under Article 8 in order to remedy the harm resulting from not closing the access. In making this decision, I consider that any interference with those rights is necessary and proportionate and in accordance with the law.
20. The appellant refers to condition 2, the removal of permitted development rights¹⁴, and condition 3, that Farndale shall be retained as ancillary to Pennine View and not be sold separately or occupied as a separate dwelling. They consider that these conditions provide adequate control over the annex, without the need for condition 4, as well as there being a lack of consideration for imposing a personal permission. However, condition 4 was considered necessary, otherwise, two properties on the site would conflict with CDLP Policies HO2 and HO6. Moreover, as the site has an occupancy condition, a personal permission is neither reasonable, nor necessary.
21. Although the Highway Authority recommends the removal of condition 4, the condition was not attached on highway safety concerns, but policy requirements that allowed Farndale to be retained as an annex to Pennine View. Therefore, this provides limited weight in support of the proposal.

Conclusion

22. For the reasons set out above, and having considered all the matters raised, the appeal is dismissed.

M J Francis

INSPECTOR

¹⁴ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)