
Appeal Decision

Site visit made on 30 September 2025

by **N Kempton BAHons PGDip MA IHBC MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

Appeal Ref: APP/D0515/W/25/3368890

47 Main Road, Parson Drove, Wisbech PE13 4JA

- 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 Mrs Karin White against the decision of Fenland District Council.
 - The application Ref is F/YR25/0305/VOC.
 - The application sought planning permission for erection of a single- storey 1-bed annexe ancillary to the existing dwelling without complying with a condition attached to planning permission Ref F/YR20/0544/F, dated 24/08/20.
 - The condition in dispute is No 2 which states that: The annexe hereby approved shall be used only in association with, and ancillary to, the occupation of the existing dwelling known as 47 Main Road, Parson Drove, and shall not be occupied, leased or rented as a separate dwelling unit.
 - The reason given for the condition is: The site is not adequate to support a separate dwelling because of its relationship with the main dwelling and the lack of any separate access to the site and therefore this development is only acceptable as ancillary accommodation in accordance with Policy LP16/LP3 of the Fenland Local Plan 2014.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. Planning permission was granted in August 2020 for the erection of a single storey 1-bed annexe ancillary to the existing dwelling. The appeal seeks the variation of condition No. 2 (the disputed condition), which is an occupancy condition that was attached to the original planning permission, ref: F/YR20/0544/F.

3. The disputed condition restricted the use and operation of the annexe for purposes in association with, and ancillary to, the host dwelling known as 47 Main Road, Parson Drove, and not to permit the use of the accommodation as a separate dwelling. Although originally used for accommodation to house family members, the appellant's circumstances have since changed and the purpose of the application was to allow flexible use of the accommodation.

4. The alternative wording of the disputed condition, as proposed by the appellant, is as follows: The annexe hereby approved shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 47 Main Road, Parson Drove. It is the appellant's case that varying the disputed condition, which restricts occupancy, would not change the existing use but would allow a broader occupation within the same use class. The appellant claims that the proposed variation would not result in any harm to the living conditions of neighbouring residents.

5. Notwithstanding the proposed variation of condition as taken from the application form, whilst the proposed wording of the condition doesn't explicitly refer to use of the annexe as a holiday let, the appellant's intention is clear from the evidence and appeal statement. The appellant is seeking use of the annexe for holiday let purposes. I have determined the appeal on this basis.

6. The main issues are:

- whether the proposed development is within the scope of Section 73 of the Town and Country Planning Act 1990 (as amended), and if so;
- whether the disputed condition is necessary and reasonable having regard to the effect that varying the disputed condition would have on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Reasons

Scope

7. Section 73 of the Town and Country Planning Act 1990 allows for applications to develop land without complying with conditions attached to a previous planning permission. However, it does not permit changes that would result in a fundamental variation to the original permission. The courts have consistently held that Section 73 cannot be used to alter the description of the development itself, only the conditions.

8. The approved development is explicitly described as 'ancillary to the existing dwelling'. The disputed condition includes a tail piece, which specifically states that the annexe 'shall not be occupied, leased or rented as a separate dwelling unit'. The proposed variation to this disputed condition, effectively omits the tail piece of the condition. However, the proposed variation would still control occupation of the annexe ancillary to the main house, as per the wording of the disputed condition. It would not change the operative part of the permission. As such, I consider that the proposal falls within the scope of Section 73. I will now consider the planning merits of varying the condition.

Living conditions

9. The appeal relates to an annexe sited to the rear of 47 Main Road, in an expansive and well-established garden. The annexe is ancillary to the host dwelling by reason of shared services, shared access and parking area. It is served by a pathway which runs past and in close proximity to the side and rear of the host dwelling.

10. Use of the annexe as a holiday let would potentially involve commercial activity which would introduce an increased turnover of guests and vehicular movements, leading to noise and disturbance. Given the close relationship and shared access with the main dwelling, guests accessing the annexe would pass directly in front of the windows serving main living spaces in the host dwelling. Furthermore, neighbouring properties are in close proximity to the annexe and parking area. For these reasons, accepting the absence of technical evidence, and notwithstanding the appellant's Management Plan and House Rules, use of the annexe for holiday let would harm the living conditions of nearby residents and negatively impact on local amenity.

11. The annexe was previously occupied by the appellant's mother. Whilst it is acknowledged that this use gave rise to overnight stays, regular interaction and visits from the wider family, this use was in association with occupation of the host dwelling.

12. The proposed variation of the disputed condition, which omits the tail piece, would make it less restrictive, which could open up potential for harm as the annexe could be occupied, leased or rented, whilst still being ancillary to the main dwelling.

13. I conclude therefore, that the disputed condition is reasonable and necessary in the interests of the living conditions of neighbouring residents with particular regard to noise and disturbance.

14. The development without the disputed condition would conflict with Policy 16 of the Fenland Local Plan 2014, which states that new development will only be permitted if it can be demonstrated that the proposal meets all of the relevant criteria listed, including, that it (e) does not adversely impact on the amenity of neighbouring users.

Other Considerations

15. I have had regard to the appeal decisions and planning permissions cited by the appellant. In the case of the Reid Judgement¹, the appeal related to the removal of a condition that was imposed to restrict the use of the annexe accommodation for purposes ancillary to the occupation and enjoyment of the occupants of the existing property. In that case, the Court determined that the operative part of the permission would remain intact, albeit it in an unconditional way, if the condition was removed. Whilst I have found that the proposed variation of the disputed condition would not change the operative part of the permission, this does not negate the need to consider as a matter of planning judgement, the merits of varying the condition.

16. In the Hart's Farm judgement², the Inspector found there to be no conflict with the original description of development in permitting a variation to allow flexible use of an annexe, either as ancillary accommodation or for holiday let. Crucially, the Inspector in that case also found no harm in considering the planning merits of the variation, including the impact upon the living conditions of a neighbouring resident. On the contrary, in this current appeal, I have found that the proposed variation would harm the living conditions of nearby residents.

17. With regards to the other appeal decisions and planning permissions cited by the appellant, these relate to the planning merits of the proposals rather than the scope of Section 73.

18. Assessing the merits of the Staythorpe House³ appeal, the Inspector compared the likely number of movements associated with the holiday let use with the comings and goings associated with the existing office use. In the New Wayside⁴ appeal, the principal issue related to a matter of strategic policy regarding visitor accommodation. As such, these appeals are not directly comparable to the current appeal.

19. Given the limited information before me, I am unable to draw comparison with the appeal decisions and planning permissions cited, and the current appeal.

Conclusion

20. For the reasons given above, the appeal should be dismissed.

¹ Freddie Reid vs SSLUHC (2022) EWHC 3116 (Admin)

² APP/P1615/W/23/3333774

³ APP/P3040/W/23/3331462

⁴ APP/J2373/W/24/3344544

N Kempton

INSPECTOR