The Planning Inspectorate

Appeal Decision

Site visit made on 7 August 2020

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/A2525/W/20/3248049
Cawood Hall, Apple Tree Farm, Cawood Lane, Gosberton, Spalding PE11 4HB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Sally Brown against the decision of South Holland District Council.
- The application Ref H08-0939-19, dated 5 August 2019, was approved on 6 December 2019 and planning permission was granted subject to conditions.
- The development permitted is proposed barn conversion and reinstatement of an extension to create a residential dwelling (existing annexe attached to the barn is to be partially demolished), plus proposed detached outbuilding - approved under H08-1108-17 - Modification of Condition 2 to allow amendments to previously approved plans.
- The conditions in dispute are Nos 2 and 6 which state that:
- (2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out.
  - i) The erection of freestanding curtilage buildings or structures including car ports, garages, sheds, greenhouses, pergolas or raised decks;
  - ii) the erection of house extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;
  - iii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows.
- (6) Within 3 months of the date of this decision notice 2.3 metre high close boarded fencing shall be erected along the western boundary of the site between points A and B (identified in green) on dwg. no. 119-01-LBP-01 accompanying this decision notice. The fencing shall thereafter be retained in its entirety.
- The reasons given for the conditions are:
  (2) To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of the area within which it is set. This Condition is imposed in accordance with Policies 2, 3 and 23 of the South East Lincolnshire Local Plan, 2019.
  (6) In the interest of the amenity of neighbouring residents. This Condition is imposed in accordance with Policies 2 and 3 of the South East Lincolnshire Local Plan, 2019.

Decision

1. The appeal is allowed and planning permission is granted for proposed barn conversion and reinstatement of an extension to create a residential dwelling (existing annexe attached to the barn is to be partially demolished), plus proposed detached outbuilding - approved under H08-1108-17 - Modification of Condition 2 to allow amendments to previously approved plans at Cawood Hall,

Apple Tree Farm, Cawood Lane, Gosberton, Spalding PE11 4HB, in accordance with application Ref H08-0939-19 dated 5 August 2019 subject to the 5 conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Sally Brown against South Holland District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The application form did not refer to the condition number to which a variation was being sought. I have therefore used the description on the Council's decision notice which referred to Condition 2 of planning permission H08-1108-17, this being the relevant approved plans condition on the original planning permission[1] that would need to be altered to reflect the proposed change to the previously approved scheme.

Background and Main Issue

4. The Council previously granted planning permission to amongst other things convert and extend a barn on the site to create a dwelling. Following a change to the approved scheme to incorporate a door rather than a window to the south west elevation, the appellant submitted an application seeking to vary the approved drawings. Planning permission was subsequently granted for the revised scheme and it is this latest planning permission[2] to which the appeal relates.

5. The latest planning permission reapplied some of the previously applied conditions including the restrictions under Condition 2 which are subject of this appeal. The other disputed condition, Condition 6, was not applied to the original planning permission.

6. The main issues are:

   (i) whether condition 2 is reasonable and necessary having regard to the character and appearance of the area and neighbouring living conditions; and

   (ii) whether condition 6 is reasonable and necessary having regard to the effect of the variation to the plans on the living conditions of occupiers of Cawood Farm with particular regard to privacy and noise and disturbance.

Reasons

Condition 2

7. Paragraph 53 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. Paragraph 001 of the Planning Practice Guidance (PPG) confirms amongst other things that it is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls.

[1] LPA Ref H08-1108-17
[2] LPA Ref H08-0939-19

8. Policy 23 (The Re-use of Buildings in the Countryside for Residential Use) of the South East Lincolnshire Local Plan (2019) (LP) states amongst other things that where permission is granted, Permitted Development Rights may be removed in order to control future alterations or extensions that may impact on the appearance and character of the surrounding area.

9. During my site visit, I noted the considerable size of the curtilage and the mature planting in place to a substantial proportion of the site's boundaries. Neighbouring dwellings are also set away from shared boundaries within their own substantial grounds. The size and position of the types of structures listed under part i) of the condition would be seen in context with the residential use of the site and would already be limited under the conditions of The Town and Country Planning (General Permitted Development) Order 2015 (GPDO). For these reasons, I am satisfied that the site has characteristics that would assist in assimilating such freestanding curtilage buildings or structures without material harm to the character and appearance of the dwelling, its wider setting or neighbouring living conditions.

10. The parties are not in dispute that parts ii) and iii) of Condition 2 are reasonable and necessary. I acknowledge that the original building has already been substantially extended and the remaining elements of the condition would ensure future extensions and alterations are sympathetic to its character and appearance and the living conditions of neighbouring occupants.

11. The fact that the condition was attached to the original permission but was not challenged at that point in time, does not persuade me that part i) is justified for the reasons already set out.

12. I conclude, having regard to the specific characteristics of the site, the restrictions in the GPDO are sufficient to ensure that the specified freestanding buildings or structures would be unlikely to have a material impact on the character and appearance of the dwelling, its wider setting or neighbouring living conditions. Consequently, Condition 2 i) is not necessary having regard to the parts of Policies 2 (Development Management), 3 (Design of New Development) and 23 (The Re-use of Buildings in the Countryside for Residential Use) of the LP that seek to protect the character and appearance of the area and neighbouring living conditions as well as the guidance in the Framework and PPG.

Condition 6

13. The top of the clear glazed door and its position within the elevation of the dwelling facing the boundary with Cawood Farm is the same as the window approved under the original planning permission. Other windows to this elevation remain as previously approved. The original planning permission did not include conditions to ensure a boundary treatment was retained to the boundary with Cawood Farm. Having regard to these factors, there is unlikely to be any significantly greater potential for overlooking as a result of the door than had previously been the case. This is a material consideration to which I must attach significant weight. My assessment must therefore consider whether there would be any other harm to the living conditions of neighbouring occupiers as a result of the proposed variation to the approved drawings that would warrant the condition requiring a 2.3 metre high fence.

14. The neighbouring dwelling is set away from the boundary and therefore any additional noise, disturbance and activity as a result of the change is more likely be perceptible from external areas. Given the position of the door on the building, it is unlikely that it would be used as a primary point of access to the dwelling. Furthermore, under the original planning permission, occupants of the dwelling would not have been prevented from accessing the land between the dwelling and the boundary with Cawood Farm. Any greater potential for activity as a result of the door is unlikely to result in levels of noise and disturbance above that usually expected within a residential environment. Taking all these factors into account, I am not persuaded that there is likely to be material harm to the living conditions of the occupants of Cawood Farm as a result of the variation to the plans.

15. During my site visit, I saw the fence that has been erected by the neighbour at Cawood Farm to the boundary with the appeal site. The Council suggests this fence is not high enough to protect the privacy of the neighbour, hence they consider the higher fence required by Condition 6 is necessary. I am also aware that this fence could be removed by the neighbour. However, this does not alter my findings that the proposed variation does result in material harm to living conditions when compared with the original planning permission.

16. I conclude there is no material harm to the living conditions for occupants of Cawood Farm arising from the proposed variation of the plans when considered against the original planning permission. Given these specific circumstances, I have not identified conflict with Policies 2 and 3 of the South East Lincolnshire Local Plan (2019) and condition 6 is not necessary.

Other Matters

17. The Council suggests that finished floor levels are higher than those previously discharged by condition. The application subject to this appeal did not seek to vary levels and I have not been provided with any definitive information as to the extent of any discrepancy. I am therefore not persuaded that any change to previously approved levels has resulted in material harm when compared with the original permission. This significantly diminishes the weight to which I am able to apply to this matter and therefore does not alter my conclusions on the main issues.

Conclusion

18. For the reasons given, the appeal is allowed and Condition 2 should be retained with part i) removed whilst Condition 6 should be deleted.

M Russell

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

   119-01-LBP-01;

Proposed 1:100 elevation drawings;

Door Specification (ref: 108219).

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out.

   i) the erection of house extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;

   ii) alterations including the installation of replacement or additional windows or doors and the installation of roof windows.

3) All new and replacement brickwork utilised in carrying out the development hereby permitted shall match as closely as possible that of the principal existing building on the site in terms of the type of brick, mortar mix and method of bonding.

4) The rainwater goods utilised in the development hereby permitted shall be coloured black and of metal construction and thereafter so maintained.

5) The guttering to the development hereby permitted shall be fixed to the external walls by means of gutter spikes/rise and fall brackets and no fascia boarding shall be used.