



Appeal Decision

Site visit made on 6 November 2017

by Caroline Mulloy BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20th November 2017

Appeal Ref: APP/Y2736/W/17/3180383

12 Burgate, Pickering YO18 7AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Paul Bircumshaw against the decision of Ryedale District Council.
 - The application Ref 16/02027/73A, dated 22 December 2016, was refused by notice dated 2 March 2017.
 - The application sought planning permission for change of use and extension of garage/store to form residential annex together with erection of garage without complying with a condition attached to planning permission Ref 02/00827/FUL, dated 10 March 2003.
 - The condition in dispute is No 7 which states that: The development hereby permitted shall be used only insofar as it forms an annexe/extension to the dwelling currently known as 12 Burgate shall at no time be occupied as a separate or self-contained dwelling unit, and shall not be sold off or let off separately.
 - The reason given for the condition is: The site is not considered to be large enough to accommodate an additional dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for change of use and extension of garage/store to form residential annex together with erection of garage/store at 12 Burgate, Pickering YO18 7AU in accordance with the application Ref 16/02027/73A dated 22 December 2016, without compliance with condition number 7 previously imposed on planning permission Ref 02/00827/FUL dated 10 March 2003 and subject to the conditions set out in the schedule attached to this Decision.

Procedural Matters

2. Since the determination of the application a plan has been submitted in support of the appeal showing how the amenity space would be subdivided and two options for the creation of an additional garage door. The plans do not fundamentally alter the nature of the proposal and consequently neither the Council nor other parties would be prejudiced by my accepting it. For the reasons set out below, I have determined the appeal on the basis of Option 2.

Background and Main Issues

3. The appeal site comprises a 2-3 storey dwelling which fronts onto Burgate and an associated annex which fronts onto Willowgate. The host property is a Grade II listed building and both properties are situated within Pickering Conservation Area. Planning permission (Council ref 02/00827/FUL) was granted for the annex subject

to a condition (7) that the annex shall not be occupied by a separate or self-contained dwelling unit as the site was not considered to be large enough to accommodate an additional dwelling. The appellant is seeking to remove the condition to enable the annex to be used for short term residential letting.

4. The main issues in this case are:

- The effect of removing the condition on the living conditions of existing and future occupiers with specific reference to amenity space; and
- The effect of removing the condition on highway safety with specific reference to parking.

Reasons

Living conditions

5. The host property and the annex currently share an amenity space which is comprised of two grassed areas separated by a footpath and low stone walls. The landform rises from Burgate to Willowgate and consequently there is a difference in ground level of around 2.4m between the host property and the annex. The difference in levels is accommodated by a series of terraces with stone retaining walls.
6. Policy SP4 of The Rydale Plan-Local Plan Strategy (RP) 2013 requires, amongst other things, that adequate private, individual amenity space will be required to be provided as part of the development of new houses or retained as existing homes are extended.
7. The annex accommodation comprises of a kitchen, living room, bathroom, two bedrooms and a box room and is, therefore, capable of being occupied as a separate residential unit by a couple or small family. The annex currently has access to a patio area immediately to the rear of the property together with a small grassed amenity space. As there is only a small retaining wall the space is not private as there is clear inter-visibility with the garden of the host property.
8. As the two properties are likely to be occupied by separate households the Council requested that a 1.8m high stone wall be built to follow the line of the existing low rise retaining wall that currently delineates the two amenity spaces.
9. The appellant would be content with sharing the amenity space and he sees no reason why future occupiers would not be prepared to do so. He states that the annex will be retained in the ownership of the appellant rather than becoming a separate dwelling and would be used for holiday or short term occupation only. He suggests that a condition could ensure that this remains the case. Although the appellant may be prepared to share the amenity space, I must consider any potential harm arising from the lack of private amenity space for future occupiers of both the host property and the annex.
10. Holiday makers may not expect a private amenity space or indeed any amenity space; however, I agree that people occupying the property for longer periods may have expectations of at least some amenity space. The Council has not questioned the quantity or quality of amenity space and so the determinative issue in this appeal is whether the amenity space should be private.
11. The Council suggested that a 1.8m high stone wall would ensure the provision of a private amenity space to serve both the host property and the annex. However, I share the appellant's concerns that due to the close proximity to the host dwelling

and the difference in levels that the wall would appear overbearing to the occupiers of the host property.

12. Furthermore, the shared garden is attractive but relatively small and is enclosed on all sides by high brick walls or structures set within a dense built-up area. Given the small size of the garden and the existing level of enclosure, I consider that the proposed 1.8m wall would both appear contrived and result in an undue sense of enclosure to the amenity spaces to the detriment of future occupiers of both properties. I have considered whether a lower wall would be appropriate, however, it would not achieve the privacy which the Policy SP4 requires.
13. The amenity areas would not be private and hence some conflict with Policy SP4 would arise. However, whilst there would be inter-visibility between the amenity areas of the properties, they would not be open to public view as they are enclosed by buildings and walls; there would only be inter-visibility with occupiers of the host property. The sharing of amenity space is not uncommon in densely built up areas or in historic areas. Indeed, a degree of inter-visibility between neighbouring gardens often exists in suburban areas. Furthermore, future occupiers of both properties would be aware of the situation when making a decision to purchase or rent.
14. Indeed, the Council has not questioned the quantity or quality of amenity space and I consider that it would provide a pleasant area to sit out and sufficient space for the usual range of domestic activities. Consequently, I consider that on balance the amenity space for both the host property and the annex would be sufficient to meet the needs of existing and future occupiers even on a long-term basis.
15. Moreover, the proposal would enable the use of the annex which may otherwise be vacant. In my view, in the specific circumstances of this case, the benefit of retaining the property in a productive use would outweigh the limited harm which I have identified and the policy conflict.
16. The appellant has suggested that a condition could be imposed to ensure that the cottage is for holiday or short term occupation only and be retained within the ownership of the appellant. The original reason stated for Condition 7 was that '*the site is not considered to be large enough to accommodate an additional dwelling*'. However, the Council does not appear to be taking the same stance in relation to the current proposal to remove the condition. It appears to accept that the annex would be large enough to accommodate a separate dwelling subject to the suggested 1.8m high stone wall and the additional garage door. Indeed the Council has not suggested the imposition of a condition restricting occupancy.
17. Furthermore, I have found that the amenity space would be sufficient to serve the needs of future occupiers even on a long-term basis and, therefore, such a condition would not meet the tests of necessity. Moreover, a condition requiring the property to be occupied for a set number of weeks per year could result in the vacation of the property, potentially at short notice causing upheaval to future occupiers. Taking these factors in combination, I do not consider that it would be appropriate to apply an occupancy condition.
18. Attention is drawn to two cases which have been granted planning permission in Willowgate in which there was either no amenity space or a smaller area of amenity space was provided. The Council clarify that the first case predates the current development plan and in the second case the accommodation was limited to being used by a member of staff employed at a takeaway. Neither of these cases are, therefore, directly comparable to the appeal proposal which limits the weight which

can be attached to them in my Decision. In any event, I have determined the appeal on its own merits.

19. For the reasons stated, the proposal to remove condition 7 would not harm the living conditions of existing and future occupiers. It would not, therefore, conflict with Policy SP20 of the RP which seeks to ensure that new development does not have a material adverse impact on the amenity of present or future occupants. As the amenity space would not be private, there would be a degree of conflict with Policy SP4 of the RP, however, I consider that this policy conflict would be outweighed by the significant benefit of retaining the appeal property in use.

Highway Safety

20. As the proposal would create a separate residential unit garaging would need to be accessed separately, rather than from the existing single garage door. As the proposal is situated within the Conservation Area, the Council consider that any new garage door should be kept to a minimum as the existing stone wall contributes to the character and appearance of the area. Consequently, the Council require that the existing wide garage door to be removed and replaced with a narrower, single door in addition to the new door.
21. The appellant considers that the additional garage door would be unnecessary on the basis that the appeal property is situated in a sustainable location close to the centre of Pickering and, therefore, the development could operate successfully without any dedicated on-site parking. He considers that occupiers could either arrange for a parking space nearby or rely on the parking spaces available along Willowgate.
22. However, I noted on my site visit that Willowgate is very narrow with residential dwellings and outbuildings directly fronting the street. There are parking restrictions along the majority of the road in order to avoid disruption to the free flow of traffic. However, there are no parking restrictions on the opposite side of the appeal property enabling the parking of around 6 cars.
23. At the time of my site visit (1145) 5 out of 6 of those spaces were occupied by cars and this is only likely to increase in the evening and overnight. Any additional vehicles parking on the street would increase competition for scarce spaces and potentially result in indiscriminate parking which could inhibit the free flow of traffic and result in harm to highway safety. Consequently and notwithstanding the benefits which would arise from retaining the masonry, I consider it necessary for a dedicated separate parking space to be provided.
24. The appellant has put forward two options for garage doors, in the event that I find that a separate door is necessary. The first option shows a standard sized garage door alongside the existing wider garage door which is the appellant's preferred option. The second option shows a reduction in the width of the existing garage door in the addition to the insertion of a second door of the same width alongside. This would retain as much stonework as possible but the appellant considers that it would deny access to the garaging for No 12 due to parked vehicles opposite.
25. Willowgate is within the Pickering Conservation Area and has a very distinctive character comprised of a tight knit fabric with buildings fronting almost directly onto the street. The western side of Willowgate has a number of ancillary buildings which are stone and pantile with relatively fewer openings contrasting with the more formal appearance of the main frontages onto Burgate. The first option would result in the majority of the front elevation of the garage being taken up with garage doors which would be at odds with the predominant character of the

outbuildings along the street. This option would, therefore, fail to preserve the character and appearance of the Conservation Area.

26. Option 2 would retain more stonework which would better reflect the character of similar outbuildings along Willowgate. Whilst this option would result in tighter manoeuvring for the occupiers of No 12 access would, nevertheless, be achievable. Furthermore, I note that there are many other properties along Willowgate which have a similar arrangement. Consequently, I consider that Option 2 would both preserve the character and appearance of the Conservation Area and avoid harm to highway safety.
27. For the reasons stated, I conclude that removing condition 7 and option 2 of the proposal would not have a harmful effect on highway safety with the suggested conditions. It would not, therefore, conflict with Policy SP20 of the RP which, amongst other things, requires access to and movement within the site by vehicles, cycles and pedestrians would not have a detrimental impact on road safety, traffic movement or the safety of pedestrians and cyclists and to comply with the relevant standards in place at the time the application is made.

Other matters

28. There would be no alterations to the Grade II listed host property or the erection of any structures within the garden area. The annex and associated garage are not listed and the additional garage door would be on the elevation facing Willowgate. Consequently, I am satisfied that the proposal would not harm the setting of the Listed Building and would not, therefore, conflict with the statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 which must be given considerable importance and weight.

Conditions

29. The Council's Highway department have suggested a number of conditions in the interests of highway safety which were also present on the original permission. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant, including the suggested highway ones. For the reasons set out above, I have not imposed condition 7. I have imposed a condition requiring the development to be carried out in accordance with the approved plans in order to ensure that the permission relates to option 2. I have not imposed the standard time limit condition as the original development has been completed.

Conclusion

30. For the reasons stated and taking all other considerations into account, the appeal should be allowed, subject to the conditions set out in the schedule attached to this Decision.

Caroline Mulloy

Inspector

Schedule

Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; drawing No 17/B28/P/01 Site Plan and east elevation option 2.
- 2) Before the development hereby permitted is commenced, or such longer period as may be agreed in writing with the Local Planning Authority, details and samples of the materials to be used on the exterior of the building the subject of this permission shall be submitted to and approved in writing by the Local Planning Authority.
- 3) Prior to the commencement of the development hereby permitted, the crossing of the channel shall be reconstructed in accordance with the specification of the Local Highway Authority to the satisfaction of the Local Planning Authority.
- 4) All doors and windows on elevations of the building/building adjacent to the existing and/or proposed highway shall be constructed and installed such that they do not open over the public highway. Any future replacement doors and windows shall also comply with this requirement.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any subsequent Order, the garage hereby approved shall not be converted into a habitable room(s) without the express written approval of the Local Planning Authority.
- 6) The first floor windows on the eastern elevation of the proposed building shall be non-opening and be permanently glazed with frosted or opaque glass to the reasonable satisfaction of the Local Planning Authority prior to the occupation of the building.