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The Planning Inspectorate
Room 3/M
Temple Quay House
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Our ref: PR02293

Date: 26th April 2024

Sent via e-mail

Dear Sir/Madam,

Appeal against Wiltshire Council's refusal to discharge a section 106 agreement - planning ref: 23/03574/F

Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992

Ventura, Thickwood Lane, Colerne, Wiltshire SN14 8BN

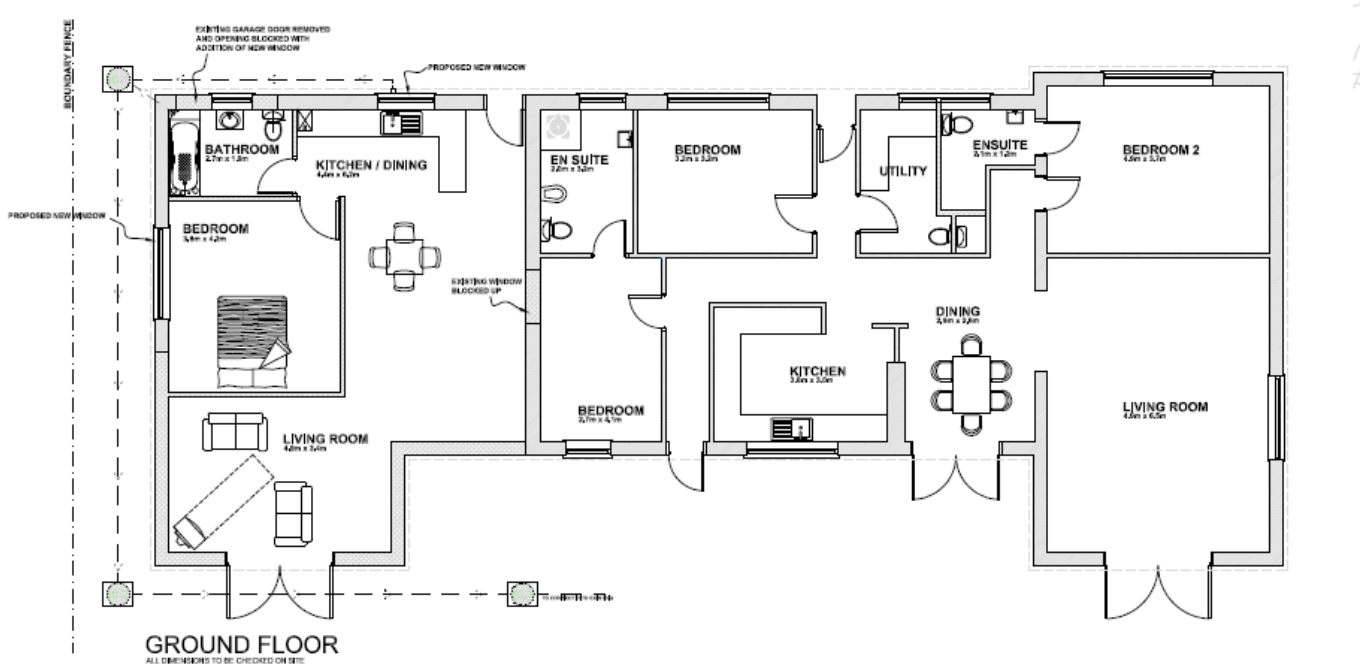
This appeal is submitted behalf of Mr and Mrs Graham and Jane Harding-Wyatt, against Wiltshire Council's recent refusal to discharge the Section 106 agreement (ref: WCS/16939) associated with the planning permission 11/02138/FUL, which authorized the conversion of the existing garage to a granny annexe. This was an amendment to an earlier permission (ref: 09/01575/FUL), which also had a s106 agreement attached. For the avoidance of doubt, the 2011 consent was implemented.

Section 106A of the TCPA allows for a planning obligation to be modified or discharged where the obligation no longer serves a useful purpose.

The s106 states that the annexe shall not be occupied other than in conjunction with the house as ancillary accommodation, and that no separate curtilage shall be formed around the annexe.

The annexe is self-contained, and has separate entrances to the main dwelling. It was created to accommodate Mrs Harding-Wyatt's parents, who have since passed away. The applicants now wish to incorporate it into the main dwelling, by unblocking the link between the two sections of the building (see extract of approved plan below). For the avoidance of doubt, the annexe

has no separate postal address, is not registered for Council Tax separately from the main dwelling, and does not have separate utilities.



The LPA refused the application, on the basis that as the annexe is laid out as a dwellinghouse, the s106 is the only mechanism preventing the annexe being used as a separate dwellinghouse and that such a use, due to the unsustainable location, would be contrary to Core Policies 1, 2 and 11.

The LPA states within its delegated report that it is now generally accepted that it is not best practice to use a s106 Agreement for this purpose but to control it by way of planning condition instead. However, in the absence of any such planning condition, the s106 was judged to be the only mechanism which would prevent the use of the annex as a separate dwellinghouse.

The appellant respectfully disagrees with this position. The creation of a separate, self-contained dwelling would constitute a material change of use requiring planning permission (Section 56(3)(a) of the TCPA states that "the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used") which the LPA would be able to assess under the relevant policies. As such, it would still be able to exert control over the creation of a dwelling in the open countryside, and assess any future application under current policy.

The LPA has focussed on the lack of an internal link between the two sections of the house, however this would also be the situation in the case of a large outbuilding in a rear garden, for

example. Such a building *could*, in theory, be used as a wholly self-contained dwelling, but it would constitute a material change of use, and a breach of planning control. Notwithstanding, as the reinstatement of the link would not constitute development, it may be the case that by the time the Inspector visits the site, this link has been reinstated.

Given that the LPA's position is that planning conditions are a more suitable way of controlling the uses of annexes as separate dwellings, I attach an appeal relating to such a condition, attached to a planning condition for an extension to an existing property (appeal ref: APP/Z0116/W/22/3295715). The LPA in that instance had imposed a condition stating:

"Following the development hereby approved the side/rear extension shall be used only ancillary to the enjoyment of the property known as 91 Exmouth Road and shall not be used or sub-let as a self-contained dwelling, independent to the host property."

The Inspector allowed the appeal, noting that whilst it could potentially be converted into a separate dwelling, any subsequent change of use in this regard would require planning permission (para 8). As such, the condition was unnecessary and did not meet all six tests required by paragraph 56 of the NPPF.

It follows that if the LPA is now saying that it would impose a planning condition in the case of the annexe, rather than a s106, then any such condition would be unnecessary, and the s106 is therefore equally unnecessary.

In conclusion, the planning obligation to restrict the use of the annexe to ancillary accommodation no longer serves any useful purpose, and the applicant respectfully requests that the Inspector allow the appeal, and discharges the Section 106 agreement.

Yours faithfully,

Stokes Morgan Planning Ltd

Attached: appeal at 91, Exmouth Road, Bristol BS4 1bd (ref: APP/Z0116/W/22/3295715).

The Planning Inspectorate

Appeal Decision

Site visit made on 2 August 2022

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th September 2022

Appeal Ref: APP/Z0116/W/22/3295715
91 Exmouth Road, Knowle, Bristol City, Bristol BS4 1BD

- 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 Mrs Alex Fry against the decision of Bristol City Council.
- The application Ref 22/00486/X, dated 31 January 2022, was approved on 17 March 2022 and planning permission was granted subject to conditions.
- The development permitted the variation of Condition No 2 following grant of planning permission 20/05846/H - Side and rear extension for a proposed garage. Amendment to regularise internal layout.
- The condition in dispute is No 2 which states that: *Following the development hereby approved the side/rear extension shall be used only ancillary to the enjoyment of the property known as 91 Exmouth Road and shall not be used or sub-let as a self-contained dwelling, independent to the host property.*
- The reason given for the condition is: *To protect neighbouring amenity. Any other use requires further assessment as it could conflict with the adopted Bristol Development Framework Core Strategy 2011 and the Bristol Site Allocations and Development Management Policies 2014, and its separate use would require careful assessment*.

Decision

1. The appeal is allowed, and planning permission Ref 22/00486/X for the variation of condition No 2 following grant of Planning Permission 20/05846/H - side and rear extension for a proposed garage. Amendment to regularise internal layout at 91 Exmouth Road, Knowle, Bristol City, Bristol BS4 1BD granted on 17 March 2022 by Bristol City Council, is varied by deleting conditions 1, 2 and 3.

Background and Main Issue

2. Application 22/00486/X was submitting seeking amendments to a side and rear extension approved in 2020. The appellant sought to vary the plans attached to the 2020 consent to regularise the internal layout.

3. The proposal subject of the appeal relates specifically relates to the 2022 permission, which is a second and separate consent for the proposed extension. The application was granted consent for the internal changes but included a condition restricting the side and rear extension accommodation to an ancillary use to the main property.

4. The reason given for the condition attached to the 2022 permission was to protect residential amenity, and that any other use requires further assessment against development plan policies. The Council specifically indicates that an active enforcement case (LPA reference: 21/30583/NAP) relates to the unauthorised use of the extension as a separate residential unit.

The appellant disputes the alleged use but based on the enforcement complaint the Council considered it necessary to impose the condition.

5. I have had regard to the information provided, but any enforcement investigation or unauthorised use of the extension as a dwelling is separate procedure and not something I can consider as part of this appeal. At the time of my site visit, an extension had been erected in the position indicated on the proposed drawings. For the avoidance of doubt, I have assessed the scheme based on drawings 19.040 – 001, 19.040 – 010, 19.040 - 011a and 19.040 – 012.

6. In view of the above, and the evidence before me, the main issue is whether condition 2 is necessary to control the nature or the use and safeguard the living conditions of neighbouring occupants.

Reasons

7. The appeal site relates to a semi-detached dwelling located on a corner plot on Exmouth Road. The proposed development is a single storey side to rear extension to the main property. The extension accommodates a bedroom and bathroom and an internal access to the main house.

8. I note the alleged use of the extension as an independent dwelling, but that is not the proposal before me. The proposed development has the scale, height and appearance of an extension to the dwelling. It is internally linked to the main house and provides a bedroom and bathroom, but it does not include a kitchen, which is an essential part of a separate residential use. Whilst it is feasible that the proposed development could be converted into a separate dwelling, any subsequent change of use in this regard would require planning permission. In this instance, the Council would be able to fully assess the merits of such a proposal against the appropriate development plan. Furthermore, with or without the disputed condition, the impact the development would have on neighbouring living conditions would be no different.

9. Consequently, having regard to the above, condition 2 is not necessary to control the nature of the use or safeguard the living conditions of neighbouring occupants.

Conditions

10. As I have concluded that the proposed development is acceptable without the condition, it would be necessary to delete condition 2 of the permission.

11. Furthermore, in determining the appeal, s79(1) of the Town and Country Planning Act 1990 allows the decision maker reverse or vary any part of the decision (whether the appeal relates to that part or not) and may deal with the application as if it had been made to him or her in the first instance, including being able to vary, delete or add a condition. In this instance, as the extension is completed and the proposal is to regularise the internal layout, it is not necessary to impose a time limit or a plans condition.

12. In view of the above, no conditions have been attached to this permission.

Conclusion

13. For the reasons given above, I find that the disputed condition is not necessary to control the nature of the use or safeguard the living conditions of neighbouring occupants. I conclude that the appeal should be allowed, and the condition removed as set out in the formal decision.

M. P. Howell

INSPECTOR