



Penderfyniad ar yr Apêl

Ymweliad â safle a wnaed ar 16/12/19

gan Richard Duggan BSc (Hons)
DipTP MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 24.01.2020

Appeal Decision

Site visit made on 16/12/19

by Richard Duggan BSc (Hons) DipTP
MRTPI

an Inspector appointed by the Welsh Ministers

Date: 24.01.2020

Appeal Ref: APP/T6850/A/19/3237399

Site address: Dolifor, Llanwrthwl, Llandrindod Wells, LD1 6NU

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- 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 Mr & Mrs Christopher & Helena Parker against the decision of Powys County Council.
 - The application Ref 19/0645/HH, dated 29 March 2019, was approved on 29 May 2019 and planning permission was granted subject to conditions.
 - The development permitted is Extension of residential curtilage (retrospective).
 - The conditions in dispute are Nos 1, 2 and 3 which state:
 - *Condition 1: This permission being retrospective as prescribed by Section 73(a) of the Town and Country Planning Act 1990 (as amended) shall be deemed to take effect from the date of consent.*
 - *Condition 2: The development shall be carried out strictly in accordance with the plans received on 12/04/2019 (drawing no: Location Plan).*
 - *Condition 3: Notwithstanding the provisions of the Town and Country Planning General Permitted development Order 2013, (or any Order revoking and re-enacting that Order) nothing in Article 3 of, or Schedule 2 to that Order, shall operate as to permit within the red outline on the location plan received on 12/04/2019, any development referred to in Part 1 of the Second Schedule to the Order and no such development shall be carried out at any time within that area without the express grant of permission by the local planning authority.*
 - The reasons given for the conditions are:
 - *Reason 1: To comply with Section 63 of the Town and Country Planning Act 1990.*
 - *Reason 2: To ensure adherence to the plans approved by the Local Planning Authority in the interests of clarity and a satisfactory development.*
 - *Reason 3: In order to control further development which has the potential to have adverse effect on privacy and/or amenity in contradiction to policy DM13 of the Powys Local Development Plan.*
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Decision

1. The appeal is allowed and the planning permission Ref 19/0645/HH for extension of residential curtilage (retrospective) at Dolifor, Llanwrthwl, Llandrindod Wells, LD1 6NU granted on 29 May 2019 by Powys County Council, is varied by deleting conditions 1, 2 and 3 and substituting for them the following condition:
 - 1) The development shall be retained strictly in accordance with the plan received on 12/04/2019 (drawing no: Location Plan).
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Main Issues

2. The main issues are whether the disputed conditions are reasonable and necessary, having regard to Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' (The Circular), to secure the implementation and retention of the development as approved and the effect of their removal on the character and appearance of the area.

Reasons

Condition 1

3. The planning application submitted to the Council sought consent for an extension to the residential curtilage of the appeal property. The Council states that it was apparent that the site was already being used for residential purposes associated with the main dwelling, with a fence erected enclosing the parcel of land and the grass had been carefully maintained. As such, the Council stated within Condition 1 that it was a retrospective application and made specific reference to Section 73(a) of the Town and Country Planning Act 1990 ('planning permission for development already carried out') within the condition.
4. Although the Council considered that the change of use of the land had already taken place, the Appellants state that the application was not submitted on that basis. There appears to be some ambiguity over whether the change of use of the land had actually taken place at the time of the application and the granting of planning permission. Nevertheless, I saw on my site visit that the land was no longer in agricultural use and was fenced off, and that it currently has the appearance of a domestic curtilage rather than agricultural land. The Appellants also confirm in their application form that the site is currently in use for domestic amenity. I have therefore made my determination on the basis that the development is retrospective.
5. Although it may be argued that condition 1 provides some clarity in terms of explaining that it is a retrospective permission and the date on which the planning permission takes effect, conditions should only be imposed where planning permission would have been refused if the requirements of the conditions were not imposed and where the conditions meet six tests¹. The Circular is clear that the standard time limiting condition would not be appropriate where development has already begun before planning permission has been granted. It does not advocate any other effective date that should be imposed by a condition and there is no such legal requirement. In addition, the reason for imposing Condition 1 relies on Section 63 of the Town and Country Planning Act 1990, but this section of the Act has been repealed. In any event, Section 63 stated that any planning permission may be granted so as to take effect from the date on which the buildings or works were constructed or carried out or the use was instituted, in other words where a permission is to refer to the date when the development or use commenced. Condition 1 refers to the date of the consent rather than the date when the use commenced, as such, Section 63 would not have been a relevant consideration.
6. Furthermore, the content of condition 1 is more akin to an advisory note than a condition. The condition requires no action or compliance by the Appellants, and I find its imposition to be neither necessary or reasonable.

¹ Circular 016/2014, The Use of Planning Conditions for Development Management

7. I conclude that condition 1 does not comply with The Circular and should be deleted from the planning permission.

Condition 2

8. The Circular advises that the approved plans that accompany a planning permission should be listed in a condition as this makes sure that there is no doubt over what development should be built and to what development the remaining conditions are applicable. The inclusion of a condition specifying the plans also allows applicants to make minor material amendments to the associated planning permission by using section 73 of the 1990 Act to vary the condition.
9. The inclusion of condition 2 within the planning permission provides certainty to the Appellants and the Council over the exact delineation of the planning permission boundary, and to avoid any doubt over the extent of the land which is the subject to the planning permission. Therefore, I consider the condition to be necessary in the interests of precision and enforceability, and meets the requirements of the six tests set out in The Circular.
10. However, the wording of the condition needs to reflect the retrospective nature of the planning permission and the fact that only one plan was submitted. To that end, in the interests of precision, I shall therefore delete condition 2 and replace it with a new condition.

Condition 3

11. The appeal property is located within open countryside in an isolated location outside the village of Llanwrthwl. The land subject to the planning permission is to the south of the dwelling and somewhat detached from the existing curtilage of the house. The land rises steeply from north to south and at the time of my site visit it was made up of mainly grassland with a number of trees located on the southernmost portion. The eastern boundary is made up of a post and wire fence and is open to views from the east, the western and southern boundaries contain a post and wire fence and include a line of mature trees and hedgerow.
12. Whilst the Council considered that the change of use of land would not have any adverse impact upon the surrounding landscape or harm the amenities of any neighbouring properties, it was considered necessary to remove permitted development rights to allow the Council to retain control over any future buildings or structures which could be constructed within the land without planning permission. Removing householder permitted development rights essentially prevents the establishment and proliferation of structures within the extended curtilage which may cause a detrimental visual impact upon the surrounding area. However, The Circular advises that conditions that restrict permitted development rights should only be imposed in exceptional circumstances.
13. I have had regard to the land being within open countryside and the Council's evidence relating to LANDMAP, its topography, its slight detachment from the main part of the dwelling and the fact that the eastern boundary of the land is open to views. I accept that the character of this area is rural in nature with neighbouring agricultural fields and a working farmyard. However, this does not appear to be an especially sensitive location in terms of the landscape, as such it does not appear that the exercise of permitted development rights would cause significant harm to either the character of this area or the 'amenity' experienced by neighbours.

14. I conclude that the condition restricting permitted development rights is not reasonable or necessary in the interests of either the character and appearance of the area, the living conditions of neighbouring residents, or to protect the wellbeing of breeding ewes within adjoining agricultural land. The fact that the Appellants are running a tourism accommodation business from the adjacent property is no reason to remove permitted development rights. As such, clear justification for imposing the condition has not been provided, and furthermore, the exceptional circumstances required to show the need for the condition, as advised by The Circular, have not been demonstrated.

Other matters

15. The Appellants have stated that an objection received to the application has influenced the Council's decision to remove permitted development rights and that they have been unfairly treated given the decision to grant other developments in the locality. I have noted the Appellants comments and concerns in this regard, but such matters are not material considerations that I can consider in the determination of this appeal. Whilst I have had regard to the objections received by the Council at the time of assessing the planning application as well as those submitted during the appeal process, for the reasons given above I am satisfied that the proposal to remove the conditions is acceptable subject to their replacement with a new condition in respect of the approved plan.
16. The Appellants have also questioned the reason for referring to Building Regulations within the decision notice. This is not a condition of the planning permission, but as the Council states, it is a standard informative note that is attached to all decision notices issued by the Council, and is attached for information purposes only.

Conclusions

17. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objectives of promoting good health and well-being for everyone and building healthier communities and better environments.
18. Having regard to the above and considered all other matters raised, I conclude that the appeal should be allowed. I will vary the planning permission by deleting the disputed conditions, but I shall impose a new condition.

Richard Duggan

INSPECTOR