



Appeal Decision

Site visit made on 20 September 2022

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/X1118/W/22/3294290

34 Beach Road, Ilfracombe EX34 9QZ

- 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 Shaun Galliver against the decision of North Devon District Council.
 - The application Ref 73372, dated 7 June 2021, was approved on 9 November 2021 and planning permission was granted subject to conditions.
 - The development permitted is erection of single storey detached outbuilding for ancillary use following demolition of existing garage (revised description and amended plans received).
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3) - *The development hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling on the application site, namely no.34 Beach Road, and specifically shall not be used as a separate unit of residential accommodation.*
 - 4) - *The proposed development shall be constructed in accordance with the following schedule of materials: horizontal timber cladding, roof tiles to match the host dwelling and timber framed double-glazed doors and windows.*
 - The reasons given for the conditions are:
 - 3) - *The establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and lead to an unsatisfactory relationship between independent dwellings contrary to Policy DM01 of the North Devon and Torridge Local Plan and the relevant policies of the NPPF.*
 - 4) - *In the interests of the appearance of the development and locality in accordance with Policy DM04 of the North Devon and Torridge Local Plan.*
-

Decision

1. The appeal is allowed and the planning permission Ref 73372 for erection of single storey detached outbuilding for ancillary use following demolition of existing garage (revised description and amended plans received) at 34 Beach Road, Ilfracombe, EX34 9QZ, granted on 9 November 2021 by North Devon District Council, is varied by deleting condition 4 and substituting it for the following condition:
 - 4) Notwithstanding the details shown on the approved plans, the development shall be constructed using:
 - Horizontal timber cladding for external walls; and
 - Roof tiles to match the host dwelling.

Procedural Matters

2. The appeal form completed on behalf of the appellant indicates that the description of the development has not changed from that stated on the

application form (Section E). However, the original application form described the proposal as the "*Demolition of existing garage and construction of single storey ancillary outbuilding to contain a single bedroom holiday let*" (my underlining). During its processing, it appears that the Council and appellant negotiated on the nature of the application and changes were made to both the plans and the description of the development. I deal with the substance of this matter below, but this is a relevant factor and I have used the description of the development as approved on the decision notice in the banner heading of this appeal and in defining my decision.

Main Issues

3. The main issues are whether the conditions are necessary and reasonable, having regard to (a) the intended use of the building, and (b) the character and appearance of the area.

Reasons

Use of the building

4. The effect of condition 3 is that the approved building can only be used as additional accommodation in association with the main dwelling, No 34 Beach Road, and not as a separate unit of accommodation. Whilst the evidence describes that the main dwelling has been used for holiday letting purposes for a substantial period, it does not have a condition limiting its use as such.
5. An email submitted to me appears to suggest that the appellant was happy to accept separate conditions to deal with the ancillary nature of the proposed building and its use as a holiday let. The description, changed shortly before the decision was issued, appeared to reflect this acceptance of an ancillary use but omitted any reference to the holiday letting purposes. The appellant goes on to detail that the 'ancillary' use restriction was accepted on the basis that it would only prevent the units from being sold separately, but this highlights a misunderstanding of the way in which such a term applies. Anything to be used for purposes *ancillary* to a host dwelling will contain facilities that extend its normal residential accommodation. In this arrangement, should the main dwelling be used for holiday letting purposes rather than as anyone's main residence, then it could be used as an extension of the accommodation for the guests staying as a single family unit for the duration of their stay. Any ancillary building is not itself an independent unit of accommodation.
6. In any event, as established by caselaw¹, an application to vary conditions may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission. The description of the development cannot be amended; only the condition can be varied. If amending or removing a condition would result in a conflict between it and the description of development, then that particular amendment is beyond the scope of such an application and a fresh planning application is required instead. Essentially, any alterations cannot fundamentally alter the original planning proposal for which permission had been granted.
7. If I were to remove the condition limiting the use of the building for ancillary purposes, then it would create a conflict with the description of the development and so cannot be granted. Both versions of the description of

¹ Finney v Welsh Ministers & others [2019] EWCA Civ 1868

development have included the word 'ancillary' and therefore, any consultation with interested parties has also only been on that basis. Furthermore, as this is not the appropriate vehicle to consider such a request, I have not considered the merits in detail as to do so could be prejudicial to any future decision-maker.

8. For the above reasons, condition 3 is considered to be entirely reasonable and necessary having regard to the basis of the extant permission.

Character and appearance

9. Condition 4 stipulates the materials to be used in the construction of the building which appear to reflect the materials specifically listed on the approved elevation plans. The appellant now requests discretion to use an alternative material for the windows and doors rather than that specified.
10. There is a wide range of materials found locally. Timber windows and doors, whilst generally more aesthetically appealing and characterful, are not found as abundantly as PVCu or other modern materials of joinery. I consider that to allow any change to the roof or wall materials would degrade the character and appearance of the building to an unacceptable degree, but that the change to windows and doors could be tolerated without undue harm or conflict with Policy DM04 of the North Devon and Torridge Local Plan (2018).
11. For the reasons above, the variation of condition 4 is considered acceptable.

Conclusion

12. For the foregoing reasons, the permission is varied as set out.

Hollie Nicholls

INSPECTOR