



Appeal Decision

Site visit made on 29 July 2020

by Mrs H Nicholls MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Appeal Ref: APP/X1118/W/20/3251066

25 Cleave Close, Sticklepath EX31 2DX

- 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 John Yeo against the decision of North Devon Council.
 - The application Ref 70376, dated 16 August 2019, was approved on 17 October 2019 and planning permission was granted subject to conditions.
 - The development permitted is erection of detached house on site adjacent to no.25 Cleave Close, EX31 2DX, Barnstaple.
 - The conditions in dispute are Nos 8 and 9 which state that:
 - 8) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times: a) Monday - Friday 08.00 - 18.00, b) Saturday 09.00 - 13.00 c) nor at any time on Sundays, Bank or Public holidays.
 - 9) The garage shall not be used for any purpose other than the parking of vehicles and retained as such thereafter.
 - The reasons given for the conditions are:
 - 8) To protect the amenity of local residents in accordance with Policy DM02 of the North Devon and Torridge Local Plan.
 - 9) To ensure that adequate provision for parking is provided prior to occupation of the building and thereafter is retained in accordance with Policies DM05 and DM06 of the North Devon and Torridge Local Plan.
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Decision

1. The appeal is allowed and the planning permission Ref 70376 for erection of detached house at 25 Cleave Close, Sticklepath, EX31 2DX, granted on 17 October 2019, by North Devon Council, is varied, by deleting condition Nos 8 and 9 and substituting them with the following conditions:
 - 1) During the construction phase until 31 March 2021, no machinery shall be operated, no process shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following times:
 - a) Monday - Friday 07.00 - 21.00
 - b) Saturday 08.00 - 21.00
 - c) nor at any time on Sundays, Bank or Public holidays.
 - 2) During the construction phase on 1 April 2021 and thereafter, and with the exception of interior painting, decorating and internal electrical works, no machinery shall be operated, no process shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following times:
 - a) Monday - Friday 07.00 - 19.00

- b) Saturday 08.00 - 17.00
 - c) nor at any time on Sundays, Bank or Public holidays.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) the garage/car parking space(s) hereby permitted shall be retained as such and shall not be used for any purpose other than the garaging of private motor vehicles associated with the residential occupation of the property and ancillary domestic storage.

Main Issues

2. The main issues are:

- whether the condition limiting construction working hours is reasonable and necessary in relation to the living conditions of neighbouring occupiers, with particular regard to noise; and
- whether the condition relating to the use of the garage is reasonable and necessary.

Reasons

Construction working hours

3. The construction working hours permitted by condition No 8 align with the standard construction working hours conditions and seek to ensure that the living conditions of neighbouring occupiers are unharmed by noise and disturbance. Whilst there is limited difference other than site size between the appeal site and another a short distance away, there are neighbouring dwellings adjoining both sides and rear boundaries and the imposition of the condition is logical. I have not been made aware that the Council has needed to rely on other noise-related legislation to remedy any harm resulting from works on the other permission highlighted by the appellant that does not have the construction working hours condition, although such reliance on legislation is possible.
4. In this case, the appellant seeks flexibility on the construction site working hours as he intends to undertake the work himself, during hours outside of his main employment, i.e. evenings and weekends.
5. Construction works that would involve heavy machinery and noise beyond typical construction working hours would result in harm to the living conditions of neighbouring occupiers, contrary to Policy DM02 of the North Devon and Torridge Local Plan (2018), and would thus conflict with the Development Plan as a whole.
6. However, the Council has set out a range of 'quieter' activities, i.e. painting and electrical works, that may take place outside of the typically permitted hours within a suggested revised condition. I consider that a similar approach could provide a better balance between the protection of the neighbour's living conditions and the ability to progress construction activities as flexibly as possible. Despite the aforementioned policy conflict, the inclusion of an alternative condition that has been edited in the interests of precision results in the permission being varied.

7. Furthermore, in response to the recent COVID-19 pandemic, the Town and Country Planning Act 1990 (the Act) has been amended to provide a fast-tracked deemed consent route for extending construction site working hours. The appeal has not been made under this new provision, but the changes, intended to allow working until 21.00 hrs, or later in some cases, will apply until 1 April 2021. It is stated in the Act that requests for an extension to construction site working hours should not be refused without good reason.
8. Whilst the appellant has expressed his intention to build the dwelling himself, the means of construction is not limited by condition or legal agreement and the choice remains open to him to employ others to assist with the works. The recent changes to the Act to allow for greater flexibility on a temporary basis are therefore a consideration of significant weight, which in my view, outweigh the conflict with the Development Plan.
9. I therefore consider it reasonable to permit the temporary extension to construction site working hours to align with the Act. Beyond the temporary period, the alternative condition restricting 'noisy' construction activities to within the typical days/hours shall take effect. The protection of Sundays and public and Bank Holidays as days which shall be free of construction works shall remain unchanged in the interests of the living conditions of neighbouring occupiers.

Use of garage

10. The imposition of a condition requiring a garage to be used specifically for the parking of vehicles is common where such a structure is relied upon as a vehicle parking space. The condition ensures that the garage cannot be converted to habitable accommodation utilising permitted development rights.
11. In this instance, the condition is reasonable and necessary to ensure that there is adequate parking provision for the host dwelling in order to avoid parking on the estate road. Though the wording is precise, it has not ordinarily been interpreted as a condition that precludes ancillary domestic storage within a garage, provided that such storage does not interfere with the parking of vehicles as its primary function.
12. In order to clarify the matter for the benefit of the appellant, I have accepted the suggested revision to the condition put forward by the Council and have made minor amendments in the interests of clarity. The revised condition seeks to ensure the retention of the garage for vehicle parking as its main purpose but also allow for ancillary domestic storage.

Conclusion

13. For the reasons given, I conclude that the planning permission should be varied as set out in the formal decision above.

Hollie Nicholls

INSPECTOR



Costs Decision

Site visit made on 29 July 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 August 2020

Costs application in relation to Appeal Ref: APP/X1118/W/20/3251066 25 Cleave Close, Sticklepath EX31 2DX

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr John Yeo for a partial award of costs against North Devon Council.
 - The appeal was against the decision to impose conditions on a grant of planning permission for erection of detached house on site adjacent to no.25 Cleave Close, EX31 2DX, Barnstaple.
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Decision

1. The application for costs is refused.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant indicates that the Council has been inconsistent in its decision making and has used conditions that are not necessary. It is also stated that the construction working hours condition is not relevant to planning because any construction disturbance can reasonably be dealt with under statutory noise provisions under separate Environmental Health legislation.
4. Whilst I accept that it would have been fairer if the construction working hours condition had been applied to both cases within Cleave Close, despite the evident difference in the sizes of the sites, the remit of this appeal is to consider whether the conditions are necessary and reasonable in relation to the development permitted. In this case I consider that the construction working hours condition is reasonable in the interests of protecting the living conditions of neighbouring occupiers.
5. There have been recent changes to the Town and Country Planning Act 1990 (as amended) specifically in response to the recent COVID-19 pandemic which allow for a temporary relaxation of construction working hours conditions. The inclusion of this new legislation highlights the commonplace nature of this type of condition in built up areas in order to protect the living conditions of neighbouring occupiers.
6. Whilst the temporary provisions in the Act may result in a greater degree of disturbance to neighbours, it has been made clear that this is a specific response to the economic effects of the pandemic and that such measures will seek to exist beyond 1 April 2021. In light of these recent changes, some

flexibility has been afforded to the appellant in order to permit longer working hours, although it would not suffice to allow reliance solely on Environmental Health legislation, particularly given the appellant's claimed intentions to work during hours outside of the typical working week.

7. No comments were provided specifically in relation to the garage retention condition and this has been varied along the lines requested by the appellant in order to provide clarity.

Conclusion

8. As such, the Council has not been unreasonable nor caused the appellant to incur unnecessary or wasted expense. For these reasons, and having regard to all other matters raised, a full or partial award of costs is therefore not justified.

Hollie Nicholls

INSPECTOR