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## Appeal Decision

Site visit made on 17 April 2019

**by Mr M Brooker DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 June 2019**

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### **Appeal Ref: APP/N1350/W/19/3220816**

#### **The Annexe, Spa Wells, Low Dinsdale, Neasham, Darlington DL2 1PL**

- 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 Gibson against the decision of Darlington Borough Council.
  - The application Ref 18/01064/FUL, dated 16 November 2018, was refused by notice dated 7 January 2019.
  - The application sought planning permission for variation of condition 9 (approved plans) of planning permission 15/00014/FUL dated 5 August 2015 for demolition of existing garage and replacement erection of residential annex comprising garage to ground floor with guest room accommodation above; and erection of storage barn – to permit insertion of 4 No. dormer windows (2 No. each side elevation), alteration to roof on west elevation, window changes, balcony and double doors (retrospective application) without complying with conditions attached to planning permission Ref 16/01128/FUL, dated 19 December 2016.
  - The conditions in dispute are Nos 2 and 3 which state that: (2) the garages hereby approved shall be used for purposes incidental to the enjoyment of the main family dwelling only, currently known as Spa Wells, and for no other purposes, including any commercial purposes, unless otherwise agreed in writing by the Local Planning Authority and, (3) the living accommodation above the garages for which permission is hereby granted shall not be occupied, let or otherwise disposed of as a separate dwelling but shall be used only for purposes ancillary to the use of the main family dwelling, currently known as Spa Wells.
  - The reasons given for the conditions are: (2) in the interests of the amenity of the locality and (3) the development is lies outside the limits of development as defined by the Borough of Darlington Local Plan 1997.
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### **Decision**

1. The appeal is allowed and planning permission is granted for variation of condition 9 (approved plans) of planning permission 15/00014/FUL dated 5 August 2015 for demolition of existing garage and replacement erection of residential annex comprising garage to ground floor with guest room accommodation above; and erection of storage barn – to permit insertion of 4 No. dormer windows (2 No. each side elevation), alteration to roof on west elevation, window changes, balcony and double doors (retrospective application) without complying with conditions attached to planning permission Ref 16/01128/FUL, dated 19 December 2016 at The Annexe, Spa Wells, Low Dinsdale, Neasham, Darlington DL2 1PL in accordance with the terms of the application, Ref 18/01064/FUL, dated 16 November 2018, and the plans submitted with it, subject to the following condition:

- 1) The garage hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as The Annex.

### **Main Issue and procedural matters**

2. The development to which the original planning permission relates, specifically the residential annex comprising a garage to the ground floor, has been constructed. The appellant wishes to remove conditions controlling the link between The Annex and Spa Wells and restricting the use of the garage to uses ancillary to Spa Wells. The main issues are:
  - whether or not condition No3 is necessary to protect the character and appearance of the countryside and whether the site would be a suitable location for housing, having regard to access to services and facilities; and,
  - whether or not condition No.2 is necessary to protect the living conditions of the occupiers of neighbouring properties.

### **Reasons**

#### *Condition No.3*

3. The proposal relates to an existing residential annexe and large ground floor garage near to the host dwelling, Spa Wells. It is physically detached from the main dwelling and has its own independent entrance.
4. Policy CS1 of the Darlington Core Strategy (CS) sets out a hierarchy of locations for development. Development is focused on the urban areas where services and facilities are accessible. The Council has also directed me to Saved Policy E2 of the Darlington Local Plan (LP) that defines the development limits. The policy seeks to restrict development outside of the settlement limits unless allowed by a specific exception, to protect the character and appearance of the countryside. The proposed development is not covered by any of the exceptions.
5. The appeal site is situated in a rural location next to an existing dwelling and barn but is outside the defined development limits. However, because the proposal relates to an existing building and as such the proposed deletion of the disputed conditions would not impact on the character and appearance of the countryside.
6. The future occupants of the proposed dwelling would be largely reliant on the use of the private car to access most everyday services and facilities. However, I am also mindful that the building can currently be used as a residential annexe and the occupiers of the annexe would be likely to be reliant on private modes of transport. Whilst the use of the building as an independent dwelling may result in an intensification in its use and further reliance on the private car, the existing residential use of the annexe is nonetheless a factor that I have taken into account.
7. The National Planning Policy Framework (2019) (the Framework) is relevant to the appeal proposal. Paragraph 79 of the Framework states that planning policies and decisions should avoid development of isolated homes in the

countryside unless one or more of a number of circumstances apply. One such circumstance is that of where *'the development would involve the subdivision of an existing residential dwelling'*. I find that this advice indicates support for the proposal which involves the subdivision of an existing residential property in a rural area.

8. In accordance with S38(6) of the Planning and Compensation Act 2004 development which conflicts with the development plan should be refused unless other material considerations indicate otherwise. While the proposed development does not accord with policy CS1 of the CS and Saved Policy E2 of the LP, I find that as a result of the absence of harm to the character and appearance of countryside and acknowledging the existing residential use of the appeal property and the advice contained within the Framework, in these circumstances these material considerations outweigh the conflict with the LP and the appeal site would be an appropriate location for housing. As such the condition is not necessary.

*Condition No.2*

9. The disputed condition ties the garage to use that is ancillary to the main dwelling, Spa Wells. The Council has stated that the reason for this relates to the objection from a neighbour and as a result of the large size of the garage creating the potential for it to be used for commercial purposes.
10. I observed at the site visit that the three-bay ground floor garage is indeed of a considerable size but also that the appeal site is in a rural location. The residential properties in close proximity to the garage are The Annex and Spa Wells.
11. As a result of the size and proximity of the garage to the residential dwellings, I find that the use of the garage for purposes other than that ancillary to a residential use would have a significant detrimental impact on the living conditions of the occupiers of those closest properties.
12. Furthermore, with the deletion of condition No.3, it is not necessary to link the garage to Spa Wells. However, I find it necessary to control the use of the garage and to link the use to the closest residential unit. An appropriately worded condition can restrict the garage in a use that is ancillary to The Annex.
13. Therefore, I find that it is not necessary to retain the disputed condition, but it is necessary to impose a new condition linking the garage to The Annex to protect the living conditions of the occupiers of nearby properties in accordance with saved Policy E2, that amongst other matters seeks to protect the living conditions of residents. Both parties have been consulted with regards this condition and raised no objection.

**Conditions**

14. For the reasons detailed above, I find it is necessary to impose an appropriately worded condition to ensure the garage can only be used for purposes that are ancillary to the residential use of the closest residential unit, The Annex. The Council and Appellant were consulted in respect of the condition and no objections were raised. The Council sought a strengthening of the condition, to specifically prevent the use of the garage for business and commercial activities. However, given the separation of the garage from other residential dwellings I do not find that such an additional restriction is necessary.

15. In responding to the appeal, the Council suggested a condition be imposed restricting external plant and machinery at the garage. As a result of the separation of the annex and garage from other residential properties I find this condition unnecessary in addition to the condition controlling the use of the garage referred to previously.
16. I have reviewed the conditions originally attached to the original planning permission and I find that it is not necessary to reimpose those conditions here because the conditions have been discharged and the development has already been carried out.

**Other matters**

17. Representations from a local resident made in respect of the application refers to a number of matters, including assertions that a business is operating from Spa Wells in breach of a planning permission and that there are covenants preventing business operations. Covenants are a matter that is not within my jurisdiction and alleged breaches of planning permission are not a matter that can be dealt within in the consideration of this appeal.

**Conclusion**

18. For the reasons given above I conclude that the appeal should be allowed.

*Mark Brooker*

INSPECTOR