

11. FULL APPLICATION - ALTERATION AND EXTENSIONS TO DWELLING TO INCLUDE SIDE EXTENSION, DETACHED DOUBLE GARAGE AND SEPARATE INDEPENDENT RELATIVE ACCOMMODATION AT LEA SIDE, NEW ROAD, BRADFIELD. (NP/S/0215/0120, P5416, 426873 / 391338 1/6/2015/SC/CF)

APPLICANT: MR JAMES FLETCHER

Introduction

This application was considered by the Authority's Planning Committee in May 2015 and members resolved to approve the application subject to the conditions listed in the officers report and subject to prior entry into a S106 agreement restricting occupation of the dependant relative unit proposed in this application and retaining this unit in an ancillary use to Lea Side. The applicant has subsequently requested that any permission for this application to be carefully worded in respect of the need for a Section 106 Agreement rather than enter into a legal agreement prior to the permission being issued.

The following updated report sets out how this request cannot be achieved through a planning condition but a condition could be used rather than a legal agreement. Whilst this approach would meet the applicant's requirements, this would not accord with the minuted resolution made by members on this application in May. This item has therefore been brought back to the Authority's Planning Committee to allow this matter to be considered by members prior to officers pursuing completion of a legal agreement or issuing a planning permission subject to planning conditions.

Site and Surroundings

Lea Side is a bungalow situated within a large mature plot on the south side of New Road, which in turn runs adjacent to the southern edge of Damflask Reservoir, approx. 0.7km north west of Low Bradfield. The dwelling was built sometime in the 1930's of red brick under a blue slate roof with bay windows to the front elevation. A single flat roofed garage lies to the west of the property, with a small outbuilding sited to the rear on the east garden boundary.

The land gradually slopes upwards from the roadside, giving the property an elevated position within the site. The land then continues to rise towards the rear of the garden with open fields beyond. The front garden is separated from the roadside by a traditional stone wall and privet hedging. Immediately to the east of the dwelling are Foxhole Cottages, a terrace of three traditional roadside properties. To the west lies a group of four dwellings which are accessed along a private track off New Road, the end one of which, 'The Coppice' is the nearest property to Lea Side and is sited approx. 40m away and at a higher level. Vehicular and pedestrian access to Lea Side is directly off New Road.

Proposal

The current application proposes alterations and extensions (side and rear) to the bungalow, demolition of the existing flat roofed garage and its replacement with a detached new double garage together with a detached new single storey dependant relative unit in the rear garden. Amended plans have been submitted since submission of the application and these now form the basis of the proposal, and the previous decision made by the Authority's Planning Committee was also made on the basis of these amended plans. The details of the proposals shown on the amended plans are as follows:

Side extension to property

This is proposed to the west gable elevation of the property and would provide additional living accommodation in the form of an extended dining/kitchen space at ground floor level and a study

area/snug and an entrance/utility area immediately underneath at lower ground floor level. The main entrance to the property would then be taken from the re-graded driveway via a new doorway into this lower ground floor.

Rear extensions to property

There is currently a recess on the rear east corner of the dwelling. The proposal is to infill this area to match the existing form and detail of the property to provide an additional bedroom with a small lean-to added on the east gable elevation to provide a WC to the bedroom.

A flat zinc roofed extension is also proposed on the rear elevation to provide space for a stair access from the lower ground floor entrance up to the main ground floor of the dwelling. To enable this development, two existing flat roofed porches, one on the rear and one on the west gable would be demolished.

New garage

The existing flat roofed garage would be removed and replaced with a pitched roof double garage with storage space above. This would be positioned virtually over the same footprint as the existing garage.

Dependent relative accommodation

A pitched roofed single storey dependant relative unit would be constructed in the rear garden, sited approximately 13m from the rear of the main dwelling and partially dug into the rising ground. The accommodation would comprise of a dining/living area, kitchen, bedroom with shower room, utility/wc, and carers room. Part of the roof space would provide storage.

RECOMMENDATION:

That the application be APPROVED subject to the following conditions:

- 1. 3 year time limit for commencement of development**
- 2. Adopt amended plans**
- 3. Occupancy restriction on the proposed dependent relative unit (i.e. restricting occupancy to a dependent relative and a carer) and a requirement to maintain the proposed annex and the existing house within the same planning unit throughout the lifetime of the permitted development rights.**
- 4. Minor building design details**
- 5. Removal of Permitted Development Rights for extensions to the proposed annex**
- 6. Removal of Permitted Development Rights for boundary walls fences and other means of enclosure within the curtilage of the property.**
- 7. Retention of garage spaces for designated parking use.**
- 8. Prior submission and agreement of an environmental management scheme including appropriate renewable energy technologies.**

Key Issues

In the original report on this item, the key issues in the determination of this application was considered to be:

- whether the proposed development is acceptable in principle
- whether the scale, design and appearance of the extensions are acceptable
- whether there will be any unacceptable harm to the enjoyment of nearby dwellings

In this updated report, the key issues are considered to be whether a legal agreement for the dependent relative unit as proposed in the original report would meet the three legal tests set out in the Community Infrastructure Levy Regulations 2010 and repeated as policy tests in the National Planning Policy Framework or whether a planning condition would be more appropriate in this case.

History

Approval was gained in 1985 to extend on the east gable elevation. This was started but not fully completed, hence the infill/setback on the rear elevation.

Consultations

Highway Authority - No response to date

Parish Council - Recommend refusal for the following reasons; Layout and density of buildings and garden grabbing.

Representations

One letter of objection has been received from the Loxley Valley Protection Society (LVPS), summarised below:

- The property lies in a sensitive setting.
- The amount of development would be beyond the amount allowable within the green belt, and may be considered overdevelopment.
- The site is sloping which may be difficult for a dependent relative with carer to cope with.
- Concerns about removal, or future removal of trees.

Main Policies

Relevant Core Strategy policies: GSP1, GSP2, GSP3 and DS1

Relevant Local Plan policies: LC4 and LH4

Core Strategy

GSP1 and GSP2 jointly seek to secure national park legal purposes and duties through the conversion and enhancement of the National Park's landscape and its natural and heritage assets.

GSP3 requires that particular attention is paid to the impact on the character and setting of buildings and that the design is in accord with the Authority's Design Guide and development is appropriate to the character and appearance of the National Park.

DS1 supports extensions to existing buildings in principle, subject to satisfactory scale, design and external appearance.

Local Plan

Local Plan policies LC4 and LH4, state that development will not normally be permitted where it would not respect, would adversely affect, or would lead to undesirable changes in the landscape or any other valued characteristic of the area. Further stating, that an appropriate scale, siting, landscaping, use of materials and a high standard of design will all be required if consent is to be granted.

Supplementary Planning Guidance is provided in the 1987, 2007 and 2014 Design Guides

National Planning Policy Framework ('the Framework')

It is considered that in this case, there is no significant conflict between these policies in the Development Plan and the Authority's adopted design guidance and the Framework because the Framework promotes high standards of design sensitive to the local distinctiveness and valued characteristics of the National Park.

However, the Framework does set out specific guidance on the use of planning obligations (i.e. s.106 legal agreements) and three specific policy tests for obligations, which are almost identical to the legal tests in the Community Infrastructure Levy Regulations 2010.

At paragraph 203, the Framework says local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. Paragraph 204 goes on to say planning obligations should only be sought where they meet all of the following tests:

1. necessary to make the development acceptable in planning terms;
2. directly related to the development; and
3. fairly and reasonably related in scale and kind to the development.

Planning Practice Guidance

Planning Practice Guidance says it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990. In such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

Planning Practice Guidance also says a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.

However, in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. In such cases the six tests for planning conditions must also be met.

Assessment

In May 2015, members of the Authority's Planning Committee were satisfied that the extensions, new garage and dependent relative unit proposed in this application were acceptable in principle with regard to LH4 and of a sufficiently high quality of design to meet the requirements of the Authority's adopted policies and design guidance. In these terms, and taking into account the location of the property and the size of the plot, and the relationship between this property and the nearest neighbouring properties, members were satisfied the proposals would not harm the character, appearance or amenities of the host property or its setting.

Therefore, members considered the proposals were in accordance with LH4, which deals specifically with householder development, and the wider range of relevant design and conservation policies in the Development Plan and the Framework subject to prior entry into a legal agreement for the dependent relative unit and conditions recommended in the officer report. These conditions included a time limit for commencement and a condition securing compliance with the amended plans, which are recommended to be retained because they are necessary in the interests of the proper planning of the local area.

It is also recommended that the suggested conditions securing minor design details and restricting the use of the garage to domestic vehicles are also retained. Firstly, to ensure the development is completed to a high standard in design and secondly, in the interests of retaining control over the garaging to prevent an over-intensive use of the site beyond what is proposed in this application. Equally, it is recommended that the condition seeking submission of energy saving measures is retained to ensure the proposed development is compliant with CC1 also taking into account the nature and the scale of the development proposed in this application.

However, it was not made especially clear in the original report what exceptional circumstances exist in this case that warranted removal of permitted development rights for extensions and boundary walls fences and other means of enclosure. The case for removing permitted development rights would be much clearer if this was split in two conditions, as suggested above, one, to remove permitted development rights for extensions from the proposed annex, the second to control the erection of outbuildings, boundary walls, fences and other means of enclosure within the curtilage of the property.

In the first instance, it would be important to ensure that the dependent relative unit remains properly ancillary to the main house in terms of its size and scale and did not become larger than proposed by the unfettered use of permitted development rights. In terms of development within the curtilage of the property, as stated in the original report, it would be important to control further development of the property, again, given the scale of development proposed in this application.

It would also be important to prevent subdivision of the plot to create two separate planning units

taking into account the creation of a new house in open countryside would be contrary to housing policies in the Development Plan and the Framework. Therefore, it is recommended to remove specific permitted development rights as suggested above in two separate conditions to reflect the particular circumstances that justify these conditions. In these respects, there would be no substantial change to the resolution made by members in May if the application were to be approved subject to the conditions.

However, it was also noted in the original report that a legal agreement restricting the occupation of the dependant relative accommodation that would also retain the annex as ancillary living accommodation for the main dwelling would necessary to avoid subdivision of the plot into two separate planning units; primarily, to avoid conflict with housing policies in the Development Plan and the Framework. In this respect, it is relatively easy to see why a legal agreement containing these types of obligations were considered necessary to make the development acceptable in planning terms; and directly related to the development given that the annex would provide all the facilities for day to day living and could - in theory - be severed off from the main property. Therefore, the proposed legal agreement could be said to meet two of the three tests in the Framework for obligations.

However, what the original report did not do is take into account that a planning condition could achieve the same objectives of making the proposed development acceptable in planning terms by restricting occupancy of the annex and retaining the existing house and the proposed annex in the same planning unit. The Framework and Planning Practice Guidance very clearly state that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition and where it may be possible to overcome a planning objection to a development proposal equally well by imposing a condition on the planning permission or by entering into a planning obligation under section 106 of the Town and Country Planning Act 1990: in such cases the local planning authority should use a condition rather than seeking to deal with the matter by means of a planning obligation.

In this respect, the original report set out several good reasons why – in practice – it might be highly unlikely that the proposed unit would be severed from the main house to create a new house in the open countryside. It was pointed out that whilst the proposed unit contains all the facilities of a self-contained dwelling, it is set within the rear garden area and reasonably close (13m) from the rear elevation of the main dwelling. Furthermore, the annex will share garden, parking facilities and all services, making it more difficult to sub-let or dispose of at any time. Nonetheless, it was also said in the original report that in any event, a S106 legal agreement is proposed, should members be minded to support the proposal, which would restrict the use of this accommodation to ancillary dependant relative use only, therefore preventing any future fragmentation of the planning unit in perpetuity.

Therefore, the original report may not have properly explained why the proposed obligation met the third test for obligations in the Framework, and did not set out clearly why the proposed legal agreement would be fairly and reasonably related in scale and kind to the development. In particular, the original report did not spell out why a legal agreement was preferred to a planning condition with regard to Government guidance in the Framework and Planning Practice Guidance. This issue now has particular significance as the applicant is seeking an alternative to prior entry into a legal agreement as per the resolution made in May and in this case, it is not considered a pre-commencement condition requiring a legal agreement (as suggested by the applicant as a possible solution) would be appropriate when paying due regard to Planning Practice Guidance

Consequently, taking in to account Government guidance on obligations, in the absence of a policy provision in LH4 requiring a legal agreement for the annex, on the individual circumstances of the case as set out in the original report, and noting the relatively modest scale of the proposed accommodation, it is considered that a planning condition should be used to

prevent the dependent relative unit proposed in this application becoming an independent and permanent dwelling house rather than a legal agreement as per the original officer recommendation and the resolution made by the Authority's Planning Committee in May.

Conclusion

In conclusion, the planning merits of the development of the proposed development have not changed and the recommendation of approval for the current application remains in accordance with the Development Plan and national planning policies in the Framework subject to the planning conditions suggested in the above report.

The only significant difference between the proposals members resolved to approve in May and the proposals officers are now recommending for approval is that the proposed dependent relative unit would be made acceptable in planning terms by the use of a planning condition rather than a planning obligation, which is consistent with the relevant tests in the Framework and Planning Practice Guidance and consistent with the original resolution made by members.

Accordingly, the current application is recommended for conditional approval.

Human Rights

Any human rights issues have been considered and addressed in the preparation of this report.

List of Background Papers (not previously published)

Nil