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# Appeal Decision

Site visit made on 18 February 2019

**by Graeme Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 11 April 2019

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**Appeal Ref: APP/E0915/W/18/3201371**

**Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Dr J Deeble against the decision of Carlisle City Council.
  - The application Ref 17/0857, dated 4 October 2017, was refused by notice dated 29 November 2017.
  - The application sought planning permission for erection of replacement dwelling (revised application) without complying with a condition attached to planning permission Ref 13/0916, dated 14 January 2014.
  - The condition in dispute is No. 8 which states that:  
*The Local Planning Authority shall be informed in writing upon first[sic] occupation of the dwelling hereby approved. Within 3 months of the first occupation of the dwelling hereby approved, the existing property known as 'Farndale', shown on Black Plan as Existing Drawing no. 3001/2, shall be demolished and all associated materials removed from site.*
  - The reason given for the condition is:  
*To prevent the retention of the existing dwelling that would be contrary to Policy H1 of the Carlisle District Local Plan 2001 - 2016.*
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of replacement dwelling (revised application) at Pennine View, Sandy Lane, Broadwath, Heads Nook CA8 9BQ in accordance with the application Ref: 17/0857 made on 4 October 2017 without complying with condition No. 8 set out in planning permission 13/0916 dated 14 January 2014 by Carlisle City Council, but otherwise subject to the following conditions set out in the attached Schedule.

## Background and Main Issue

2. Planning permission was granted in 2012<sup>1</sup> for the erection of a replacement dwelling. The replacement dwelling proposed in that scheme would have been sited partly on the footprint of the existing bungalow known as 'Farndale'. A subsequent proposal, granted planning permission in 2014<sup>2</sup> (the 2014 scheme), also sought permission to construct a replacement dwelling but avoided 'overlap' with the existing bungalow at Farndale.
3. The 2014 scheme was subject to a number of conditions, including the condition now the subject of this appeal. The appellant previously applied for

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<sup>1</sup> LPA Ref No: 12/0948

<sup>2</sup> LPA Ref No: 13/0916

the removal of condition 8 of the 2014 scheme<sup>3</sup>, a proposal for which an appeal was subsequently dismissed<sup>4</sup>. The effect of a planning permission without condition 8, in the circumstances considered in the previous appeal, would have been that the proposal would have resulting in the creation of an additional, rather than a replacement, dwelling in close proximity to the existing dwelling.

4. However, in the current instance the appellant has requested that condition 8 of the 2014 scheme be removed and replaced with an alternative condition, an amendment to the wording of which was agreed between the parties during the course of the application, and is as follows:

*Variation of condition 8 of previously approved permission 13/0916 to read as follows: The bungalow known as 'Farndale', identified on the Block Plan as 'Existing Dwelling' shall cease its independent residential use and shall be occupied solely as ancillary accommodation to the property known as 'Pennine View'. Pennine View and Farndale shall comprise a single planning unit.*

5. Thus, the appellant now seeks to retain 'Farndale' as an annexe to the new main house known as 'Pennine View'. The effect of a planning permission with a condition incorporating the revised wording suggested by the appellant would be the retention of the bungalow known as 'Farndale' as ancillary accommodation to the property known as 'Pennine View'.
6. The main issues are therefore:
  - Whether or not the proposal can reasonably be considered to be ancillary accommodation for Pennine View; and
  - If it is not ancillary accommodation, whether or not the proposal as an independent dwelling would be appropriate having particular regard to (i) housing in the countryside and (ii) the living conditions of occupants of Farndale, with particular reference to privacy.

## **Reasons**

### *Whether or not ancillary accommodation*

7. The Council state that Farndale has a scale and appearance that is consistent with a 2-bedroom bungalow. I agree; that is what it was previously occupied as. I saw that Farndale benefitted from having two bedrooms, a living room, kitchen / dining room, bathroom and entrance hall. Although at the time of my visit to the site there was no oven / hob / cooker in place, there was evidently space for one to be accommodated within the kitchen area. The Council's conclusion in this respect is therefore a logical and accurate one having considered its internal arrangement at the time of my visit to the site. There is thus agreement between the main parties that Farndale is capable of, and has the facilities required for, independent day-to-day living.
8. However, although that may be so, a separate, independent dwelling is not what the appellant initially applied for. Rather, the proposal, expressed in the appellant's wording for a revised condition 8, quite clearly seeks to retain Farndale, not as a separate dwelling, but as a residential annex to provide ancillary accommodation to the recently built Pennine View.

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<sup>3</sup> LPA Ref No: 16/0196 – also seeking the removal of condition 13

<sup>4</sup> APP/E0915/W/16/3160411

9. Although the evidence that I have been provided with of the details of how this would exist in day-to-day terms is limited, that evidence does demonstrate the intention for mutual support between the appellant and her son in the respective buildings. Whilst I have noted these personal circumstances, consideration of how ancillary accommodation would function relative to the main dwelling inevitably involves an element of the occupier's personal circumstances. In this respect, the appellant clarifies, albeit briefly, the nature of this functional relationship, being one of mutual support between the appellant and her son and his family, within the appeal submissions.
10. However, other factors also inform an assessment of the ability, or likelihood, of a building such as the retained bungalow, being occupied as ancillary accommodation. Thus, the retained Farndale would be significantly smaller in all quantifiable aspects than Pennine View. As a consequence, the living accommodation provided within it, whilst sufficiently capable of being used as independent accommodation, would be of a different nature to, and more basic in terms of the range of accommodation and smaller in scale, than that provided within Pennine View.
11. Additionally, condition 13 of the previous permission<sup>5</sup> required the closing up of the existing driveway access serving Farndale. The Council have suggested a condition to this effect in relation to the current appeal, should the appeal succeed, the effect of which would be that the two buildings would share the same vehicle and pedestrian access, parking provision and turning space. Thus, the blocking up of the existing point of access serving Farndale, and the use of the access and gravelled turning / parking area in front of Pennine View, would re-enforce the impression of Farndale being ancillary to Pennine View. From that single point of access, access to both buildings would be both clear, convenient and logical.
12. The Council are concerned that both of these factors could be overcome through implementation of permitted development rights or without the need for planning permission. However, appropriately worded conditions could provide the control necessary to ensure that such factors, and the occupation of Farndale itself, ensure and reinforce the ancillary nature of the appellant's proposals. Thus, there would be no separate outdoor areas associated specifically with one or other of the buildings, rather a continuous open area laid to lawn around and between the two.
13. Pennine View benefits from a reasonably-sized detached outbuilding to one side, and slightly in front of, that dwelling. Its position and siting relative to the main building is similar to that of Farndale relative to Pennine View. The Council cite the retention of Farndale as eroding the rural and spacious character of the countryside in which the appeal site lies. However, the retention of Farndale would not compromise or erode the expansive, open and gently undulating landscaping that surrounds the existing residential curtilage, nor would it materially alter the character or nature of the somewhat sporadic pattern of development that I saw to be present along Sandy Lane.
14. I accept that there would be a reduction in openness around Pennine View within the residential plot compared to a scenario whereby Farndale was no longer present. However, I do not consider that its retention would be harmful to the character or appearance of the surrounding open countryside, which is

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<sup>5</sup> LPA Ref No: 13/0916

pleasantly undulating and expansive. Furthermore, although Farndale would be larger than the existing detached outbuilding, I am satisfied that further steps could be taken, secured by condition such as suggested by the appellant, to ensure that it shares a palette of materials with the main dwelling and the other detached outbuilding. Such measures would add to other outwardly visible factors such as the nature and appearance of the space around the buildings, the single point of access and the close physical relationship between Farndale and Pennine View to re-enforce the appellant's intended ancillary use and occupation of Farndale.

15. I have noted the Council's concern, given the lengthy planning history associated with the site, that it is, and has been, the appellant's long-standing intention to secure an additional separate dwelling at the appeal site. To do so would, they argue, be in conflict with local and national planning policy as the appeal site is an inappropriate location for new housing development.
16. I agree, as does the appellant in evidence, that Farndale is capable of occupation as an independent, self-contained dwelling. However, for the reasons I have set out above, I am satisfied that the bungalow known as 'Farndale' is also clearly capable of occupation providing living accommodation ancillary to the occupation of Pennine View. I have not been directed towards any Carlisle District Local Plan (CDLP) policies that preclude the principle of a residential annex and it seems that there is agreement between both main parties on this matter. CDLP policies HO6 and SP2 seek to resist unjustified encroachment into the open countryside and only permit housing in such locations where special circumstances exist. A condition to restrict occupancy of Farndale to an ancillary role relative to occupancy of Pennine View would secure such a relationship, avoid the creation of an additional dwelling (via retention) in an open countryside location and ensure that it is occupied as an ancillary residential annex.
17. Given the available evidence regarding mutual dependence and support between the appellant and her son, in terms of the sharing of meals and other domestic functions, the provision and retention of a single point of access into the site and logical links to entrances to Pennine View and Farndale annex, and the limitations imposed by the proximity of the buildings to each other, I consider such an approach to be reasonable and justified. In reaching this conclusion, I am mindful of CDLP policy HO10 and the supporting text thereto, and paragraph 5.84 suggests that appropriate locations for housing to meet specific needs need not always be in locations benefiting from local services and facilities to be sustainable in the broadest sense.
18. I have noted that both parties considered that the fallback position<sup>6</sup> should be given significant weight as there is a realistic prospect of it being implemented. I have no evidence to the contrary and, whilst not decisive, this matter adds weight to my conclusions regarding the ancillary nature of Farndale.

### *Appropriateness*

19. As I have concluded that the existing bungalow known as 'Farndale' can, with a suitably worded condition restricting occupancy to ancillary to that of Pennine View, and other conditions as described above, and set out separately below,

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<sup>6</sup> Class E of Schedule 2 Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

be occupied as accommodation ancillary to Pennine View, I have not considered further the matter of the building as a separate and independently occupied dwelling. That is not what the appellant initially applied for and, as such, I do find the provisions of CDLP policies SP2, HO2 or HO6 to be of relevance to the proposal as applied for, and subsequently now before me.

20. Extensive reference is made to the conclusions of the Inspector in relation to the previous appeal<sup>7</sup> at this site. However, the application that led to that appeal disputed condition numbers 8 and 13 and sought their removal, the effect of which would have been the retention of Farndale as a separate, independently occupied dwelling. For the reasons I have set out above, I have considered this appeal on the basis of what was applied for, namely occupation of Farndale as a residential annex to Pennine View and ancillary thereto. Although the Council have sought to draw heavily on the conclusions of the Inspector in that instance, on the evidence I do not consider that proposal to be directly comparable and so the weight that I give those conclusions in my assessment of the current proposal are correspondingly limited.
21. The Council's second reason for refusal concerned itself with the effect of the retention of Farndale as a separated, independently occupied dwelling, on the living conditions of occupiers of both Pennine View and Farndale. This concern stemmed principally from the relationship of the first floor balcony at the rear corner of Pennine View with the outdoor space and habitable room windows at the rear of Farndale, and the effect on privacy for occupiers of both properties.
22. However, as ancillary accommodation to the occupancy of the main dwelling, there is no imperative to consider the effect of the proposal upon privacy vis-à-vis Pennine View and Farndale. Nor is there any suggestion that the retention of Farndale as accommodation ancillary to Pennine View would be harmful to the living conditions of other properties beyond the appeal site. Thus, as ancillary accommodation to Pennine View, I have not considered matters of privacy, or the provisions of CDLP policy SP6 or the Council's Supplementary Planning Document<sup>8</sup> any further.

## Conditions

23. Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under Section 73(a) of the Act should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. Whilst I have no information before me about the status of the other conditions imposed on the original planning permission and whether or not they have been formally discharged, the Council have suggested a fresh suite of conditions in their Statement of Case. I have noted those conditions and am satisfied that the appellant has had the opportunity to consider those conditions.
24. I have considered the suggested conditions accordingly, having regard to the provisions of the Framework and Planning Practice Guidance. Where necessary I have amended conditions in the interests of precision. As per the subject of this appeal, I have adopted attached a condition restricting occupancy of the bungalow known as 'Farndale' to that of ancillary to the residential use of 'Pennine View'.

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<sup>7</sup> APP/E0915/W/16/3160411

<sup>8</sup> 'Achieving Well Designed Housing' – Supplementary Planning Document, April 2011

25. I have omitted the Council's suggested time limit condition (No.1)<sup>9</sup> as the development has already commenced but have replicated the plans condition attached to the original permission<sup>10</sup> (and as confirmed by both parties during the course of this appeal) in order to provide certainty.

**Conclusion**

26. For the reasons I have set out, and having considered all other matters raised, I conclude that the appeal should be allowed.

*Graeme Robbie*

INSPECTOR

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<sup>9</sup> Set out at paragraph 5.1, LPA Statement of Case

<sup>10</sup> LPA Ref No: 13/0916

### **Schedule of Conditions**

- 1) The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
  1. the Planning Application Form received 4th October 2017;
  2. the Planning Statement received 4th October 2017;
  3. the Planning Statement Appendix received 4th October 2017;
  4. the Notice of Decision;
  5. And the following plans : Drawing no. 3001/1; Drawing no. 3001/2; Drawing no. 3001/2C; Drawing no. 3001/4; Drawing no. 3001/5; Drawing no. 3001/6; the Supportive Statement received 20th November 2013; the Stage One Desk Top Study Assessment of Likelihood Of Contamination Of Proposed Development received 20th November 2013; the Hedge Survey Schedule received 20th November 2013.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) there shall be no enlargement or external alterations to the dwelling unit to be erected in accordance with this permission, within the meaning of Schedule 2 Part (1) of these Orders, without the written approval of the Local Planning Authority.
- 3) The bungalow known as 'Farndale' shall cease its independent residential use and shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 'Pennine View' and shall not be sold separately or occupied as a separate dwelling.
- 4) Within 3 months from the date of this permission, the existing accesses to the highway shown on the Block Plan As Existing Drawing no. 3001/2 serving the property formerly known as Farndale, shall be permanently closed and the highway crossings and boundaries shall be reinstated in accordance with details have been submitted to and approved in writing by the local planning authority.
- 5) Visibility splays providing clear visibility of 2 metres by 45 metres measured down the centre of the access road and the nearside channel line of the major road shall be provided at the junction of the access road with the county highway in both directions. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order) relating to permitted development, no structure, vehicle or object of any kind shall be erected, parked or placed and no trees, bushes or other plants shall be planted or be permitted to grown within the visibility splay which obstruct the visibility splays. The visibility splays shall be constructed before general development of the site commences so that construction traffic is safeguarded.

**\*\*end of Schedule\*\***