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## Appeal Decision

Site visit made on 29 October 2019

**by R Cooper BSc (Hons) MCD MRTPI**

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

**Decision date: 26<sup>th</sup> November 2019**

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### **Appeal Ref: APP/U2370/W/19/3234113**

### **Faulkners Fold Cottage, Faulkners Lane, Forton PR3 0AL**

- 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 Ms S England against the decision of Wyre Borough Council.
  - The application Ref 18/00918, dated 19 September 2018, was refused by notice dated 21 March 2019.
  - The application sought planning permission for the erection of a replacement dwelling and the demolition of existing dwelling without complying with conditions attached to planning permission Ref 17/00470/FUL, dated 7 September 2017.
  - The conditions in dispute are Nos 2 and 13 which state that:  
(2) The development shall be carried out, except where modified by the conditions to this permission, in accordance with the Planning Application received by the Local Planning Authority on 01/06/2016 including the following plans:  
Proposed Site Plan Drawing Number GA3006-PSP-01-C  
Proposed Elevation and Floor Plans (Revised) Drawing Number GA3006-002-D  
(13) Within three months of the first occupation of the replacement dwelling hereby approved the existing dwelling (known as Faulkners Fold Cottage) as shown on site plan (GA3006-PSP-01-C) shall be entirely demolished, the ground levelled and returned to grassed form and any leftover materials removed from the site. The applicant shall provide, in writing, to the Local Planning Authority the date of first occupation and confirm in writing that the condition has been complied with once the works required by this condition have been completed.
  - No reasons are given for the conditions on the decision notice.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. Onsite it would appear that construction the footings of the replacement house have begun. However, the condition in dispute has not yet been breached because it requires only that the original house be demolished within 3 months of first occupation of the replacement dwelling, which has not yet happened. I have therefore determined the appeal as one made under section 73 of the Act.
3. The decision of the Council to refuse the application relates to evidence of viability for a holiday let, justification for an additional dwelling in the countryside, and the effect on the living conditions of occupiers of both the existing and proposed dwellings with regards to outlook and privacy. These are considered to be the matters in dispute by the parties.

4. However, the original application Ref 17/00470/FUL (the planning permission) sought planning permission for the erection of a replacement dwelling and the demolition of existing dwelling. This appeal seeks to vary planning conditions 2 and 13 to facilitate the retention of the original dwelling for use as holiday accommodation. In the first instance I am required to consider whether or not this constitutes a materially different proposal. Therefore, this has formed the basis of the main issue.

### **Main Issues**

5. The main issues are 1) whether the requested variation of conditions 2 and 13 are within the scope of this appeal with regards to the materiality of the proposed changes; 2) whether the proposal would be an appropriate form of development in this location, having regard to relevant local planning policies; and 3) the effect of the proposal on the living conditions of occupiers.

### **Reasons**

6. The appeal site is split into two parcels of land located opposite each other at northern most extent of Faulkners Lane, a narrow country lane surrounded by agricultural land. The existing dwelling that the appellant seeks to retain is a modest two bedroomed period cottage, the proposed dwelling would be larger and positioned so that it would front onto the existing dwelling at a slight angle.
7. The Planning Practice Guidance<sup>1</sup> states that, although conditions can be used to make a minor modification to a proposal, a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used. By extension there may be cases where removing a condition would significantly change the proposal.
8. The planning permission was granted for the erection of a replacement dwelling and the demolition of existing dwelling. The effect of varying, or indeed removing the conditions would result in two dwellings as appose to one. Furthermore, the appellant also seeks to vary the conditions to allow for the dwelling to be specifically used for holiday accommodation. This would constitute a materially different scheme, to that of the appellants original proposal (the application), that 3rd parties and stakeholders were consulted by the Council.
9. Varying the conditions would result in a material change in the proposal that would prejudice the interests of 3rd parties. Therefore, it would not be appropriate for me to do so, and the appeal cannot be supported. Furthermore, the decision does not affect the existing permission which can still be implemented in accordance with the relevant planning conditions, which should remain in place.
10. I have considered the appellant's claims in relation to the viability of using the dwelling as a holiday let, and that they consider its retention to be ancillary as oppose to a separate dwelling. However, as I have already found that the request to vary the conditions falls outside of the scope of this appeal,

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<sup>1</sup> ID 21a-031-20140306 & ID 21a-012-20140306

therefore it is unnecessary for me to address the substantive issues relating to the disputed conditions.

**Conclusion**

11. For the reasons given above, the appeal should be dismissed, and the conditions retained in their present form.

*R Cooper*

INSPECTOR