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Application No. P24/S0925/S73

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Appeal Decision

Site visit made on 25 July 2023

by H Wilkinson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 December 2023

Appeal Ref: APP/Q3115/W/22/3311809

Sandy Acre, Woodperry Road, Beckley, Oxford, Oxfordshire OX3 9UY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Smith against the decision of South Oxfordshire District Council.
 - The application Ref P22/S2193/FUL, dated 8 June 2022, was refused by notice dated 14 October 2022.
 - The development proposed is the retention of existing bungalow and alterations to layout and driveway to provide parking and garden areas with associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. With the agreement of both parties, the description of development as stated on the planning application form was amended during the application process. Accordingly, I have amended the description of development as set out in the banner heading above to reflect this.

Reasons

3. Planning permission was granted by the Council for the erection of two dwelling houses with gardens, parking, and ancillary works in replacement of existing bungalow (alternative proposal to permitted house and garage P20/S1555/FUL) under reference P20/S4112/FUL. Condition 14 of the said planning permission states *'that the building specified in the application to be demolished shall be demolished within 3 months of the first occupation of either the two dwellings hereby permitted'*.
4. The appeal application sought planning permission in full to retain the building specified to be demolished (the bungalow) under Section 62 of the Town and Country Planning Act 1990 (TCPA). The evidence before me indicates that the bungalow was constructed in accordance with an existing planning permission. Thus, for the purposes of Section 55 of the TCPA, the retention of the bungalow would not amount to development requiring planning permission. Therefore, there is no development that can be granted, and the appeal cannot be allowed under Section 62.
5. Section 73 of the TCPA allows for the determination of applications to develop land without complying with conditions subject to which a previous planning permission was granted. In seeking to retain the bungalow, the appeal proposal effectively sought permission to develop the land without complying with condition 14 of P20/S4112/FUL.

6. However, no mention was made of seeking a new permission for the two dwellings without compliance with this condition on the application form and the development was clearly described as being for the retention of the bungalow. It was on this basis that the planning application was considered by the Council and the interested parties. Therefore, whilst I have considered whether the appeal could be determined under Section 73, it is my view that doing so would prejudice the interested parties. Thus, it would not be appropriate in this case.

Other Matters

7. As the appeal is failing for the reason set out above, it is not necessary for me to consider the effect of the appeal proposal on the openness of the Green Belt.

Conclusion

8. For the reasons set out above, the appeal is dismissed.

H Wilkinson

INSPECTOR

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