
Appeal Decision

Site visit made on 30 August 2016

by D M Young BSc (Hons) MA MRTPI MIHE

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 5 October 2016

Appeal Ref: APP/M9496/W/16/3152338

Swallow Cottage, Pilhough Road, Rowsley DE4 2NE.

- 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 W Mitchell against the decision of Peak District National Park Authority.
 - The application Ref NP/DDD/0416/0325, dated 15 April 2016, was refused by notice dated 27 May 2016.
 - The development proposed is the deposit of soil.
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Decision

1. The appeal is allowed and planning permission is granted for the deposit of soil at Swallow Cottage, Pilhough Road, Rowsley DE4 2NE in accordance with the terms of the application, Ref NP/DDD/0416/0325, dated 15 April 2016, subject to the following conditions:
 - 1) The engineering operations hereby permitted shall cease and all soil originating from the excavations as set out below shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for landscaping works shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
 - v) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the

time limits specified in this condition will be suspended until that legal challenge has been finally determined

Preliminary Matters

2. When I visited the site it was evident that the soil has already been deposited in the field to the north of the driveway serving Sallow Cottage. According to the Appellant, the material was originally deposited to create a hard-surfaced area to improve vehicle manoeuvring. The soil originates from the excavations connected to the implementation of a planning permission to extend the former garage/outbuilding¹. This appeal scheme seeks permission to retain the spoil albeit re-graded and landscaped to reduce its visual impact.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the Peak District National Park (PDNP).

Reasons

4. The appeal site is situated in the PDNP. The *National Planning Policy Framework* (the Framework) states that great weight should be given to conserving landscape and scenic beauty in National Parks which have the highest status of protection in relation to landscape and scenic beauty.
5. Swallow Cottage occupies an isolated and elevated position on a north facing hill slope to the east of Pilhough Lane. The surrounding area is lightly settled and forms part of an attractive pastoral landscape. The appeal site itself is located on the north side of the access road serving Swallow Cottage opposite the former garage. It is bounded by sloping pasture land to the north, east and west which generally falls away from the appeal site toward Pilhough Lane. To the south and at a higher level is a large wooded area. These features are typical of that described in the *Landscape Character Assessment for the Derwent Valley 2009* (LCA).
6. Policy CC3 of the *Peak District National Park Core Strategy Development Plan Document* (the CS) states that domestic waste or spoil arising from building operations must be managed and re-used on site provided there are no significant environmental risks to flora, fauna, local communities or the water environment. There is no evidence before me that the development would result in any such risks. I therefore concur with the appellant that the proposal complies with Policy CC3 and represents a more sustainable solution overall than transferring the soil off-site with the significant number of lorry movements that would incur.
7. I have noted the Authority's comments in relation to Policy CC3 and in particular its insistence that 'on site' must mean the exact application site. However I find this to be an excessively rigid and unreasonable interpretation of the policy. In any event the red-line boundaries for both the garage and spoil applications encompass the wider site and therefore in that regard the soil is not being deposited off-site. Compliance with Policy CC3 does not however obviate the requirement for the development to accord with the overall aims of

¹ The garage is the subject of a separate appeal decision Ref: APP/M9496/W/16/3152332.

paragraph 115 of the Framework or the provisions of the development plan in terms of landscape protection.

8. At the time of my visit the spoil had grassed over and was not readily apparent in longer distance views from the north. However, its profile was clearly visible from a number of locations on or adjacent to Pilhough Lane. From here, it appears as an unnatural, man-made land-form which contrasts markedly with the topography of the surrounding field. It is likely that the spoil would be more prominent during the winter months when the trees that provide screening along Pilhough Lane have shed their leaves.
9. However, rather than retaining the spoil in its current form, the appeal scheme seeks to re-grade it to a more natural contour. Plans have been submitted showing a remodelled embankment with a maximum gradient of 30 degrees. According to the appellant once the engineering works have been completed the proposed embankment would be seeded with grass and returned to agriculture and not used in connection with the parking/manoeuvring of cars.
10. In my view, once the works are complete and the hedge reinstated along the driveway edge, the spoil would be barely perceptible from public viewpoints in the area. The resulting gradient would closely respect the general lay of the land to the north of the appeal site which in turn reflects the typical character described in the LCA. I therefore find little evidence to support the Authority's view that it would be a large and obtrusive land-form.
11. For the reasons given, I conclude that the development would not harm the character and appearance of the PDNP. It would thus accord with Policies CC3, GSP1, GSP2, GSP3 and L1 of the CS and Policy LC4 of the *Peak District National Park Local Plan 2001*. Collectively these seek to ensure that development proposals secure the statutory aims of the PDNP, and respect, conserve and enhance all valued characteristics of the site with particular reference to the effect of the proposal on the character and landscape within which they sit.

Conditions

12. The Authority has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance (PPG). The condition requiring a revised profile to be submitted and approved is unnecessary and unreasonable as it would modify the proposal in such a way as to make it substantially different from that applied for. The PPG advises that conditions should not be used in this way.
13. The purpose of condition 1 is to require the appellant to comply with a strict timetable for the implementation of the permission as well as a suitable landscaping scheme which are needed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a part-retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding matters because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of

State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed.

D. M. Young

Inspector