
Appeal Decision

Site visit made on 3 January 2017

by Beverley Doward BSc BTP MRTPI

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

Decision date: 26 January 2017

Appeal Ref: APP/A0665/W/16/3159865

Swinford Stables, Nortons Lane, Mouldsworth, Chester, CH3 7JZ

- 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 Mr & Mrs J Fielding against the decision of Cheshire West & Chester Council.
 - The application Ref 16/02184/S73, dated 23 May 2016, was refused by notice dated 26 July 2016.
 - The application sought planning permission for new dwelling (for rural worker associated with Polo business) (resubmission of 14/05268/FUL) without complying with a condition attached to planning permission Ref 15/03936/FUL, dated 26 November 2015.
 - The condition in dispute is No 4 which states that: 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), other than as hereby approved no building, enclosure or structure shall be erected within the site curtilage, nor enlargement or extensions be made to the dwelling without the grant of planning permission by the local planning authority.'
 - The reason given for the condition is: 'To ensure the development meets the functional and financial requirements of a rural workers dwelling and to accord with the provisions of the National Planning Policy Framework and saved Policy EC23 of the Chester District Local Plan.'
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Decision

- 1) The appeal is allowed in part and planning permission is granted for a new dwelling (for rural worker associated with Polo business) (resubmission of 14/05268/FUL) at Swinford Stables, Nortons Lane, Mouldsworth, Chester, CH3 7JZ in accordance with the application Ref 16/02184/S73 dated 23 May 2016 without compliance with condition number 4 previously imposed on planning permission Ref 15/03936/FUL dated 26 November 2015 and subject to the conditions set out in the attached schedule.

Background and Main Issue

- 2) The appeal site forms part of a larger area of land which comprises a polo field, grazing land and a number of structures associated with the equestrian uses on the site including a stable block, tack room and associated storage areas, hardstanding and parking area. There is also a mobile home located adjacent to the stable block. The western boundary of the site is formed by Nortons Lane. To the north, south and east are open fields. The site is within the Green Belt.

- 3) Planning permission was granted on the site for a rural worker's dwelling in association with the polo business in November 2015. The permission was subject to the condition in dispute. The appellants seek the deletion of the condition indicating that they consider that the restriction of permitted development rights through the condition is unjustified with due regard to the development plan and national policy. The appellants consider that the erection of a rural worker's dwelling in this location cannot be described as otherwise unacceptable in the absence of the condition in dispute and that any future development pursuant to available permitted development rights would be necessarily modest in scale and would simply allow the occupiers to respond to changing family circumstances and the evolving needs of the business.
- 4) The appellants contend that the condition is unnecessary, imprecise and unreasonable and that it fails to accord with the advice of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) in relation to the use of planning conditions.
- 5) The Council considers that the condition satisfies the tests set out in paragraph 206 of the Framework and that no compelling evidence has been submitted to demonstrate otherwise. It indicates that having regard to the guidance in the PPG it considers that the circumstances of the case relating to a rural worker's dwelling in connection with a relatively new polo-related equestrian business in the Green Belt can very reasonably be described as exceptional.
- 6) Accordingly, having regard to the above background, I consider that the main issue in this case is whether the condition in dispute is necessary, reasonable and precise having regard to local and national planning policy relating to housing in the countryside.

Reasons

- 7) The development plan for the area comprises the policies of the Cheshire West and Chester Local Plan (Part One) Strategic Policies (Local Plan Part One) and the saved policies of the Chester and District Local Plan 2006 (CDLP). Saved policy EC23 of the CDLP relates to rural worker's dwellings and indicates that planning permission will be permitted provided that a number of criteria are met. One of these is whether the size of the proposed dwelling is acceptable having regard to the scale and nature of the activity and the essential functional/financial need for the dwelling.
- 8) The explanatory text to saved policy EC23 indicates that it is intended to prevent sporadic residential development in the countryside whilst catering for the genuine needs of workers associated with an established agricultural, forestry or other rural business. It also indicates that the Council will consider withdrawing specific permitted development rights in order to retain control over the size of the dwelling in relation to its purpose.
- 9) Paragraph 55 of the Framework relates to housing in rural areas and indicates that to promote sustainable development in rural areas local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as the essential need for a rural worker to live permanently at or near their place of work in the countryside.

- 10) The appellants refer to an appeal decision¹ which they consider lends support to their case that saved policy EC23 of the CDLP should attract reduced weight in the decision process having regard to the advice at paragraph 215 of the Framework. Whilst I note the findings of the Inspector in that appeal I am nevertheless mindful that the Framework also indicates that it sets out the Government's requirements for the planning system only to the extent that it is relevant, proportionate and necessary to do so. It seems to me therefore that in considering whether there is an essential need for a rural worker to live permanently at or near their place of work in the countryside in accordance with the advice at paragraph 55 of the Framework, it is sensible and reasonable to consider the size of the proposed dwelling, along with functional and financial tests in any such assessment. Accordingly, I am satisfied that policy EC23 of the CDLP is broadly consistent with the advice of the Framework in this respect and therefore it attracts significant weight in my consideration of this appeal.
- 11) Saved policy EC23 of the CDLP does not indicate a specific maximum size for a rural worker's dwelling. The approved dwelling would measure about 160 sq. m. At the time of its consideration of the planning application for the dwelling the Council indicated, by cross reference to an earlier report for a previous planning application for a rural worker's dwelling on the site, that a dwelling of this size would be at the upper limit in terms of its size of what would normally be considered acceptable for a rural worker's dwelling and that therefore having regard to saved policy EC23 of the CDLP, which requires the size of the dwelling to reflect the scale and nature of the activity, permitted development rights should be removed to preclude any extensions outside of its control and thereby ensure that the size of the dwelling remains appropriate to the scale of the business and affordable for a rural worker.
- 12) I have not been provided with a copy of the survey referred to in the Delegated Report on the previous planning application which is stated as indicating that the average size of agricultural dwellings normally considered as acceptable was 157 sq. m. I also note that the appellants indicate that they are not aware of any such survey having been carried out by the named consultants in 2011. Nevertheless it seems to me that a dwelling of about 160 sq.m would not be insubstantial and would therefore be likely to be towards the upper limit of what could be reasonably be described as a scale commensurate with its function. I also note that the statement supporting the planning application for the dwelling indicated that it would be of an appropriate size to accommodate the appellants and their family.
- 13) The further enlargement or extension of the dwelling as permitted development could result in a significantly larger dwelling than that necessary, having regard to the scale and nature of the activity. Accordingly, I am satisfied that having regard to saved policy EC23 of the CDLP which requires the size of the dwelling to reflect the scale and nature of the activity an element of restriction of the further enlargement or extension of the dwelling by the withdrawal of permitted development rights is both necessary and reasonable. This would not preclude the appellants seeking planning permission for any future extensions or enlargements but would allow the Council to control the extent of any such development so as to ensure the dwelling remains appropriate to the scale and nature of the activity.

¹ APP/H3320/W/15/3006586

- 14) The condition in dispute not only also restricts the future use of permitted development rights for any enlargement or extension of the dwelling but also any building, enclosure or structure within the site curtilage. However, there is nothing in the evidence before me which leads me to conclude that the removal of such rights, which could relate to outbuildings, sheds and fences, is necessary or reasonable in the context of saved policy EC23.
- 15) I acknowledge that the PPG advises that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. However, in this case, given that the size of the dwelling is a consideration in the assessment of whether there is an essential need for a rural worker's dwelling and that it is that need which outweighs the harm so as to constitute the very special circumstances necessary to justify inappropriate development in the Green Belt, I am satisfied that exceptional circumstances exist to restrict the use of permitted development rights to further enlarge or extend the dwelling.
- 16) The PPG indicates that the scope of conditions restricting the future use of permitted development rights need to be precisely defined by reference to the relevant provisions in the General Permitted Development (England) Order 2015 (GPDO) so that it is clear exactly which rights have been limited or withdrawn. The condition in dispute does not do this and as such it is not clear which rights have been withdrawn.
- 17) Class A of Schedule 2, part 1 of the GPDO relates to the enlargement, improvement or alteration of a dwelling house and whilst there are some restrictions, a significant extension could nevertheless be built. Therefore, given my findings above, I consider that in order to ensure that the condition is precise it should refer to the enlargement or extension of the dwelling within this class of development. The design of the dwelling with dormers on both the front and rear roof slope means that there would be little if any scope to enlarge the dwelling within the provisions of Class B of Schedule 2, part 1 of the GPDO which relates to roof enlargements. Therefore, I consider that it is not necessary to refer to this class. Furthermore, given the size restriction (3 sq.m.) that would apply to any porch which could be added to the dwelling under the provisions of Class D of Schedule 2, part 1 of the GPDO I also consider that it is neither necessary nor reasonable to refer to the provisions of this class.
- 18) Class E of Schedule 2, part 1 of the GPDO relates to buildings etc incidental to the enjoyment of the dwellinghouse. However, as indicated above there is nothing from the evidence before me to persuade me that the exclusion of permitted development rights under the provisions of this class is necessary. The same applies to Class A of Schedule 2, part 2 of the GPDO which relates to fences, walls and means of enclosure.
- 19) The various appeal decisions referred to by the Council serve to indicate that each case must be considered on its own merits having regard to the specific circumstances of the case and I confirm that I have considered the appeal proposal on this basis.

Conditions

- 20) The PPG indicates that to assist with clarity, decision notices for the grant of permission under section 73 should also repeat the relevant conditions from

the original permission unless they have already been discharged. It also indicates that planning permission cannot be granted under section 73 to extend the time limit within which a development must be started. Therefore, I have amended the standard time limit condition so that the planning permission runs from the date of the original permission which in this case was 26 November 2015. I have no information about the status of the other conditions imposed on the original planning permission. Therefore, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

- 21) I have deleted the disputed condition and replaced it with a modified one as indicated above. In accordance with the advice of the PPG that the scope of such conditions needs to be precisely defined by reference to the relevant provisions in the GPDO so that it is clear exactly which rights have been limited or withdrawn I have referred to the specific class of development.

Conclusion

- 22) For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Beverley Doward

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from 26 November 2015.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location plan, 1401.02 B Floor plans, 1401.03 B Elevations and 1404 Rev D Revised site layout plan.
- 3) The occupation of the dwelling hereby approved shall be limited to a person solely or mainly employed, or last employed at J F Polo Academy, Swinford Stables, Nortons Lane, Chester, CH3 7JZ or a widow or widower of such a person, and to any resident dependants.
- 4) Notwithstanding the provisions of Schedule 2 Part 1 (Class A) of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or enlargements shall be made to the dwelling hereby permitted unless authorised by the grant of planning permission by the local planning authority.
- 5) Prior to the first use of each material listed below, the following samples/details of the materials to be used in the construction of external surfaces of the development shall be submitted to and approved in writing by the local planning authority:
 - Sample of the facing brick;
 - Sample of the slate;
 - Details of any hardstanding areas (to be permeable);
 - Details of the rain water goods, cills, heads, windows and doors.Development shall only be carried out in complete accordance with the approved materials.
- 6) Prior to the first occupation of the dwelling hereby approved, full details of the proposed hedgerow planting (along the north eastern and north western boundaries of the site) shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include:
 - i. Written specifications -noting species, plant sizes and proposed numbers/densities;
 - ii. Programme of implementation and maintenance.If within a period of 5 years from the date of initial planting, any trees or shrubs planted in accordance with the approved landscaping works are removed, die, become diseased or seriously damaged then replacement trees or shrubs shall be planted in the next planting season with others of similar size and species, unless the local planning authority gives its written approval to any variation.
- 7) The development hereby approved shall only be carried out in accordance with all mitigation measures as detailed in the Jeff Clarke Ecology Great Crested Newt Habitat Suitability Index and Impact Assessment Report March 2015 (JCE/HSI/151).
- 8) Within one month of the first occupation of the dwelling hereby approved, the existing temporary dwelling (approved under application 15/01884/FUL and marked as 'Caravan' on the approved plans) and the resultant material shall be

removed from site and the land restored to its former condition (as part of the field).