

Appeal Decision

Site visit made on 7 June 2017

by Brendan Lyons BArch MA MRTPI IHBC

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

Decision date: 16th June 2017

Appeal Ref: APP/W0530/W/17/3168454

123 Meldreth Road, Whaddon, Cambridgeshire SG8 5RS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Geoffrey Hyland against the decision of South Cambridgeshire District Council.
 - The application Ref S/0746/16/FL, dated 16 March 2016, was approved on 14 November 2016 and planning permission was granted subject to conditions.
 - The development permitted is demolition of the existing bungalow and erection of a two-storey replacement dwellinghouse.
 - The condition in dispute is No.10, which states that: Notwithstanding the provisions of Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any order revoking and re-enacting that order with or without modification), no development falling under Classes A, B, E and F of Part 1 of Schedule 2 of Town and Country Planning (General Permitted Development) (England) Order 2015 as amended shall be allowed without the granting of specific planning permission.
 - The reason given for the condition is: To ensure the protection of the character and appearance of the area, the amenity of the current and future occupants of the site and the amenity of neighbouring properties.
-

Decision

1. The appeal is allowed and the planning permission Ref S/0746/16/FL, for demolition of the existing bungalow and erection of a two-storey replacement dwellinghouse at 123 Meldreth Road, Whaddon, Cambridgeshire SG8 5RS, granted on 14 November 2016 by South Cambridgeshire District Council, is varied by deleting condition No.10.

Application for costs

2. An application for costs was made by the appellant against the Council. That application is the subject of a separate Decision.

Main Issue

3. The appeal site is a rectangular plot at the edge of a small village. Planning permission has been granted, subject to conditions, to replace the existing bungalow with a larger two-storey house in the same location. The appeal is made against condition No.10 of the planning permission, which removes 'permitted development' rights granted by the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('the GPDO'). The reason given for the condition is to ensure the
-

protection of the character and appearance of the area and of the amenity of current and future occupiers of the site and of neighbours.

4. The main issue in the appeal is whether the condition is necessary and reasonable for the reason given.

Reasons

5. The National Planning Policy Framework ('NPPF') advises that conditions should only be imposed that are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.¹ In this case, there is no dispute that the condition under appeal is relevant, enforceable and precise, but the appellant considers that it is unreasonable and unnecessary.
6. The effect of the condition would be that planning permission would have to be sought from the Council for future enlargement or alteration of the house (GPDO, Schedule 2, Part 1, Class A), additions or alterations to the roof (Class B), the erection of buildings and storage containers incidental to the use of the house (Class E) and the provision and replacement of hard surfaced external areas (Class F). The appellant's concern is that the need to seek such permission would incur costs in drawing up plans and submitting applications that would not arise if the development were permitted as normal.
7. The NPPF also advises that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.² The Government's Planning Practice Guidance ('PPG') states that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances.³
8. The Council's justification for imposing the condition is set out in a paragraph of the officer report that recommended approval of the planning application. In response to the appeal, the Council relies on the same document, but has also sought to add some further clarification through its reply to the costs application.
9. The report notes that the approved house would be considerably larger than the bungalow it would replace and that the site already contains several large outbuildings. However, the report had earlier concluded that the additional size would not result in any adverse impact on character and appearance or on neighbours' living conditions. It is not clear why the size of the dwelling should justify the restriction on alterations and additions imposed by the disputed condition. As the appellant points out, each of the permitted development classes is already constrained by the terms of the GPDO to ensure significant adverse impacts would be unlikely.
10. The approved scheme would involve removal of some of the outbuildings close to the bungalow. At the time of my visit, the garage had already been taken away, but another outbuilding, not shown on the application plans had been erected in the garden. However, there is no reason to conclude that the addition of further outbuildings or the formation of hard surfaced areas, within the limits prescribed by the GPDO, would have harmful outcomes.

¹ NPPF paragraph 206

² NPPF paragraph 200

³ PPG: Use of Planning Conditions paragraph 21a-017

11. In respect of any of the classes, even if some minor adverse effect would occur, no evidence has been provided to show any particular sensitivity of context or reason why the approved dwelling should not have the same rights as the surrounding houses or the existing bungalow.
12. The officer report also refers to the flood risk on the site, which is within Flood Zone 3 and potentially liable to flooding from the stream along the northern boundary. It could be argued that addition of significant built form on the site, either as extensions or outbuildings, could influence the effect of flooding on the site or elsewhere. However, control of flood risk is not given as a reason for imposing the condition. Moreover, having considered the views of the Environment Agency, the Council decided to grant permission for the house without fully allowing for a 1 in 100 year flood event. It is difficult to see that tighter control of additions would affect the situation to a significant degree. Furthermore, had the Government considered this to be a significant risk factor, the GPDO could have been drafted to limit permitted development within Flood Zone 3, just as it is in other sensitive areas.
13. I agree with the appellant that the need to seek specific planning permission for minor development that would normally be permitted by the GPDO would represent an imposition in time and cost. The Council's suggestion that permitted development would not be prevented but would be subject to control seems to misunderstand the nub of the issue. The Council also seeks to argue that alterations such as replacement of windows and doors or of hard paving would not normally be regarded as development requiring planning permission and so would not be affected by the condition. But it appears that such changes would require a judgment to be made and that any owner of the house would be well advised to at least seek confirmation of the status of any intended alterations, which could in itself incur some cost and inconvenience. The Council also notes the absence of pre-application advice, but does not explain how this would have prevented the imposition of the condition.

Conclusion

14. I find that clear justification for imposing the condition has not been provided, contrary to NPPF policy, and that exceptional circumstances to show the need for the condition have not been shown, as advised by the PPG. In the circumstances of this permission, the condition is not necessary or reasonable.
15. For the reasons set out above, I conclude that the appeal should be allowed and the planning permission should be varied by deletion of Condition No.10.

Brendan Lyons

INSPECTOR