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## Appeal Decision

Site visit made on 27 June 2017

**by John Felgate BA(Hons) MA MRTPI**

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

**Decision date: 04 July 2017**

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**Appeal Ref: APP/W0530/W/16/3157713**

**32 Ickleton Road, Duxford, Cambridgeshire CB22 4RT**

- 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 Edward Shelton against the decision of South Cambridgeshire District Council.
  - The application Ref S/2860/15/FL, dated 5 November 2015, was approved on 31 May 2016 and planning permission was granted subject to conditions.
  - The development permitted is *"erection of outbuildings including the construction of an indoor swimming pool and associated landscaping and groundworks (part retrospective)"*.
  - The conditions in dispute are Nos 2, 3, 4 and 6, which state as follows:
    - [Condition 2]** *"Details of external materials including cladding, roof finishes, doors and windows shall be submitted within 3 months of the date of this permission (or as otherwise agreed in writing by the Local Planning Authority) works shall be carried out using these materials and carried out within 6 months of written approval of these details by the Local Planning Authority"*.
    - [Condition 3]** *"A detailed landscaping scheme including levels and full sectional details of any groundworks at an appropriate scale, boundary treatments and planting of all trees and shrubs proposed, shall be submitted within 3 months from the date of this decision (or unless otherwise agreed in writing by the Local Planning Authority) and all works to be carried out in accordance with these details shall be completed within 6 months of the date of approval of these details."*
    - [Condition 4]** *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Classes A and E of Part 1 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf."*
    - [Condition 6]** *"During the period of demolition and construction, no power operated machinery shall be operated on the site before 0800 hours and after 1800 hours on weekdays and 1300 hours on Saturdays, nor at any time on Sundays and Bank Holidays, unless otherwise previously agreed in writing with the Local Planning Authority."*
  - The reasons given for the conditions are:
    - [Reason 2]** *"To ensure the appearance of the development is satisfactory in accordance with Policy DP/2 of the adopted Local Development Framework 2007"*
    - [Reason 3]** *"To ensure the development is satisfactorily assimilated into the area and enhances biodiversity in accordance with Policies DP/2 and NE/6 of the adopted Local Development Framework 2007."*
    - [Reason 4]** *"In the interests of visual and residential amenity in accordance with Policy DP/3 of the adopted Local Development Framework 2007."*
    - [Reason 6]** *"To minimise noise disturbance for adjoining residents in accordance with Policy NE/15 of the adopted Local Development Framework 2007."*
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## **Decision**

1. The appeal is allowed and the planning permission Ref S/2860/15/FL, for erection of outbuildings including the construction of an indoor swimming pool and associated landscaping and groundworks (part retrospective), at 32 Ickleton Road, Duxford, Cambridgeshire CB22 4RT, granted on 31 May 2016 by South Cambridgeshire District Council, is varied by deleting conditions 2, 3 and 4, and substituting for them the following conditions:
  - [2] Details of the external materials, including the cladding, roof finishes, doors and windows, shall be submitted to the Local Planning Authority within three months of the date of this decision, or within such other period as may be agreed in writing by the Authority. No further work on the development shall take place until written approval has been given by the Authority to these or other proposed materials. Thereafter, the development shall be carried out using the materials thus approved.
  - [3] A detailed landscaping scheme, including levels and full sectional details of any groundworks at an appropriate scale, boundary treatments and planting of all trees and shrubs proposed, shall be submitted within 3 months from the date of this decision, or within such other period as may be agreed in writing by the Local Planning Authority. No further work on the development shall take place until written approval has been given by the Authority to these or other landscaping proposals. The development shall thereafter be carried out in accordance with the levels and groundworks details thus approved, and the approved planting and boundary treatments shall be carried out before the end of the first available planting season following the practical completion of the development.
  - [4] Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within Class E of Part 1 of Schedule 2 of the Order shall take place unless expressly authorised by planning permission granted by the Local Planning Authority in that behalf.

## **Procedural matter**

2. In the original application, the applicant's name was omitted. This is agreed to have been an error, and there is no dispute as to the fact that the appellant Mr Shelton is the person entitled to pursue this appeal.
3. The appellant's grounds of appeal refer to conditions 2, 3 4 and 5, but this again appears to be an error, as the grounds argued clearly relate to the subject matter of Condition 6 rather than 5. I have dealt with the appeal on this basis.

## **Main issue**

4. The main issue is whether the disputed conditions meet the tests in paragraph 206 of the National Planning Policy Framework (NPPF), with particular regard to whether they are necessary and reasonable.

## Reasons for decision

### *Condition 2*

5. The requirement in Condition 2, for details of the external materials to be submitted and approved, is a standard one, applied to most developments, to ensure that the appearance is satisfactory and appropriate to the character of the surrounding area. I see no reason why such a requirement should not be applicable here. The development has been set into the rising ground, so that little of it will be seen from public views, but it will still be clearly seen from neighbouring properties, and the choice of materials will be highly relevant to the impact on the occupiers of those properties. Although certificates of lawfulness have been issued for alternative forms of development on the site, there is no evidence that the present appeal scheme could be carried out without needing permission. Condition 2's basic requirement for the materials to be approved is therefore reasonable and necessary.
6. The time limit for the submission of these details is 3 months. To my mind this gives the appellant more than adequate time to research suitable products and put forward details for approval. And in any event, the condition allows for this period to be extended by mutual agreement with the Council. There is no requirement for the details to be approved within any specified timescale. In my view the stated timescale for submission is reasonable.
7. The next requirement is that the development be carried out using the materials that will have been approved. Again this does not seem to me a controversial proposition. In all of these respects therefore, I see no justification to amend Condition 2 as it currently stands.
8. However, the remaining requirement under Condition 2 is that the development be carried out within 6 months from the date of approval of the materials. To my mind, this wording is somewhat ambiguous as to what it is that is required within this period. If the requirement is for full completion, the national Planning Practice Guidance (PPG) is clear in advising that conditions requiring a development to be completed in its entirety will fail the test of necessity. Alternatively, if that is not the intention, then in my view this element of the condition must still fail, because of the lack of clarity.
9. I agree with the Council that, in its present unfinished state, the appeal development is unsightly, and I can appreciate their desire to avoid the construction period becoming unduly prolonged. But in this respect there is no real difference between this development and most others. No reason is apparent as to why the appeal scheme should be treated as an exception to the clear advice in the PPG. I therefore intend to delete the requirement for works to be carried out within 6 months from the date of approval of the materials.
10. Instead, I have substituted a requirement that no further works of any kind be carried out until the materials are agreed. To my mind, this will ensure that the adverse impacts of the unfinished development are not exacerbated until there is a clear prospect of the development proceeding to a conclusion, and also gives both parties an incentive to reach agreement on these matters with some degree of urgency.
11. I therefore conclude that Condition 2 in its original form fails the tests of necessity and reasonableness. As such, it should be deleted and replaced by the new Condition [2] set out above.

### *Condition 3*

12. As explained above, although the development is within a residential curtilage, it has already had, and would continue to have, a substantial visual impact on other nearby properties, if not mitigated. In these circumstances Condition 3's requirement for a landscaping scheme is a reasonable measure, and the timescale of 3 months for its submission is justified. So too is the requirement for the approved landscaping details to be fully implemented.
13. However, it is this issue of mitigation that distinguishes Condition 3 from Condition 2. Where any form of mitigation is required, it is perfectly normal, and indeed reasonable, for conditions to specify a timescale, not only for such measures to be agreed, but also for them to be implemented. This is necessary to avoid a prolonged period where the development's overall impact is adverse. In principle therefore, the requirement to complete the landscaping works within a defined timescale is justified.
14. Similarly to Condition 2, the period of 6 months from the date of approval is unreasonable in my view, not least because new planting can only realistically be carried out when all other elements of the development have been completed. In such situations, it is more usual that landscaping works are required to be carried out in the next planting season after completion, and in the present case this seems to me to be the best way to secure the timely provision of any new planting. There is also no reason why the same should not apply to the provision of any new boundary treatments agreed under this condition.
15. With regard to the Condition's provisions relating to levels and groundworks, these seem more likely to form part of the development itself, rather than mitigation. Compliance in respect of these aspects can therefore be secured simply by a requirement that the development be carried out in accordance with the agreed details.
16. As with Condition 2, I also consider that the wording of Condition 3 should prevent further development being carried out until these matters are agreed, so as to avoid the possibility of the harm being exacerbated before there is a clear prospect of mitigation being applied.
17. I therefore conclude that in most respects Condition 3 is necessary and reasonable. But nevertheless, the requirement for the completion of landscaping works within 6 months does not meet these tests, and the existing condition is therefore replaced by the new Condition [3] set out above.

### *Condition 4*

18. Condition 4 removes permitted development rights for house extensions under Class A, and for outbuildings under Class E, of the Town and Country Planning (General Permitted Development) (England) Order 2015.
19. The outbuildings which are the subject of this appeal cover a large proportion of the residential curtilage. And in addition, the way the buildings are distributed on the site, with the remaining space fragmented into a series of narrow strips and small spaces, means that the development's visual presence is further exaggerated, well beyond its mathematical site coverage. Consequently, to all intents and purposes, the site now appears predominantly covered with buildings. In these unusual circumstances, it seems to me that

the restriction in Condition 4, against any further outbuildings under Class E, is reasonable and justified.

20. With regard to Class A, the existing dwelling on the site is a small bungalow. Although it appears to have been previously extended, the building in its present form remains modest in size. I have no clear information as to the scope that it may have for any further enlargement within the limits of Class A, but there is no evidence that such extensions would be likely to cause any significant harm to adjoining occupiers, even when considered cumulatively in combination with the appeal development. I therefore see no case for limiting these existing rights under Class A.
21. Alongside this appeal, I have determined a separate appeal on the same site, in which I have granted permission for a new 2-storey house to replace the existing bungalow<sup>1</sup>. Condition 9 of that permission removes permitted development rights for extensions under Classes A and B in respect of that proposed new dwelling. In the event of any further alternative permissions for new dwellings being granted, it would be open to the Council or the Secretary of State to impose similar conditions if they consider them to be justified. Consequently, neither the existence of the permission referred to above, nor the possibility of any other permissions being granted in the future, justifies the imposition of a restriction on Class A permitted development in relation to the present appeal.
22. I therefore conclude that Condition 4 in its present form is unreasonable and should be amended. It is replaced by the new Condition [4] as set out above.

#### *Condition 6*

23. Condition 6 limits the hours when powered construction machinery can be operated on the site during the construction period. I appreciate that the appellant wishes to carry out much of the development himself, and thus might wish to carry out some operations outside normal working hours. But neighbouring occupiers are entitled to expect tolerable living conditions, and this must include freedom from the types of noise likely to be generated by power machinery at unsocial hours.
24. As the Council acknowledges, some control over noise is available under other legislation. However, for the most part those other powers are reactive rather than preventive. For the reasons already stated, I consider it reasonable in this case to retain the preventive control provided by Condition 6.
25. I therefore conclude that Condition 6 should remain unaltered.

#### **Conclusion**

26. For the reasons stated, I conclude that although Condition 6 meets the tests in the NPPF and should remain in place, the existing Conditions Nos 2, 3 and 4 fail those tests, and should be replaced with the amended versions numbered [2], [3] and [4] as set out following paragraph 1 of this decision. The appeal therefore succeeds and the planning permission is varied accordingly.

*John Felgate*

INSPECTOR

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<sup>1</sup> APP/W0530/W/16/3166353