



Appeal Decision

Site visit made on 24 July 2017

by Harold Stephens BA MPhil DipTP MRTPI FRSA

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

Decision date: 28 July 2017

Appeal Ref: APP/C3240/W/17/3174695

Land adjacent to Mill Cottage, Mill Lane, Wellington, Telford TF1 1PR

- 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 M Oluwadimu against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2016/1029, dated 1 November 2016, was approved on 7 March 2017 and planning permission was granted subject to conditions.
 - The development permitted is the erection of 4 No. dwellings and garages.
 - The condition in dispute is No. 15 which states that:
"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:
 - extension to the dwelling
 - free standing building within the curtilage of the dwelling
 - addition or alteration to the roof
 - erection of a porch
 - hard surfacing
 - any windows or dormer windows"
 - The reason given for the condition is:
"To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building."
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Decision

1. The appeal is allowed and the planning permission Ref TWC/2016/1029 for the erection of 4 No. dwellings and garages at land adjacent to Mill Cottage, Mill Lane, Wellington, Telford TF1 1PR granted on 7 March 2017 by Telford and Wrekin Council, is varied by deleting condition No. 15.

Main Issue

2. I consider the main issue in this appeal is whether the condition imposed is reasonable and necessary in the light of national and local policy guidance.

Reasons

3. The site relates to an area of land between Mill Cottage and Mill Lane Terrace and has the benefit of planning permission for the construction of 4 houses. The appeal site comprises an extensive area of former garden accessed by a gated entrance onto Mill Lane.

4. The Appellant objects to this condition as no exceptional circumstances have been cited by the Council to warrant the removal of permitted development rights. It is argued that the condition is neither reasonable nor necessary in order to allow the development to proceed.
5. I note the policies contained in the statutory development plan for the area. This includes policies within the Core Strategy (CS) which was adopted in December 2007 and the saved policies of the Wrekin Local Plan (WLP) which was adopted in February 2000. The Council does not cite any particular policies that relate to this condition and the delegated report is silent on the matter.
6. The National Planning Policy Framework (NPPF) indicates at paragraph 206 that planning conditions should only be used where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 200 of the NPPF indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so.
7. The Planning Practice Guidance (PPG) advises:

*"When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. The objectives of planning are best served when the power to attach conditions to a planning permission is exercised in a way that is clearly seen to be fair, reasonable and practicable. It is important to ensure that conditions are tailored to tackle specific problems, rather than standardised or used to impose broad unnecessary controls."*¹
8. The PPG also advises:

*"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. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. Area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. The local planning authority also has powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area."*²
9. The provisions of paragraph 200 of the NPPF and paragraph: 017 Reference ID: 21a-017-20140306 of the PPG are clear and unambiguous. The Council's delegated report is silent on the exceptional circumstances that are relied upon in order to justify the removal of permitted development rights. The reason for the condition refers to the need to safeguard the character and visual amenities of the area and to ensure that adequate private open space is retained within the curtilage of the building. The wording of this condition is not precise to the circumstances surrounding the application (building or buildings) nor does it explain why such harm would be so exceptional as to warrant refusal without the condition.

¹ Paragraph: 001 Reference ID: 21a-001-20140306

² Paragraph: 017 Reference ID: 21a-017-20140306

10. At my site visit I saw that the character of the area comprises a variety of house types with detached and semi-detached properties, some with rear and side additions. Mill Cottage and Mill House are large traditional detached properties. Heather Drive to the rear of the appeal site comprises 1970s mainly semi-detached properties and Millfields Park is in the vicinity of the site. The proposed development seeks to reflect the existing character of the area. The site is not within a designated character area nor is it within a Conservation Area, Area of Outstanding Natural Beauty, or the curtilage of a Listed Building. The addition of extensions, outbuildings or roof alterations within the boundaries of the General Permitted Development Order 2015 would have no overriding impact on the appearance of the proposed small cul-de-sac of houses or the wider character of development within the area.
11. With regard to private open space I saw that each of the proposed dwellings would have a sizeable rear and side garden. Whilst as detached houses it is recognised that some of the rear garden could be constructed on in the form of outbuildings or rear extensions a sizeable area of land would remain. As such the use of permitted development rights at a later date would not give rise to an overriding or exceptional loss of private amenity space that would result in the development proving unacceptable in planning terms.
12. Taking all of these matters into account I consider that the Council has not demonstrated the exceptional overriding circumstances which would justify the removal of permitted development rights in this case. In my view the disputed condition is unnecessary. The condition is severable and can be removed without causing unacceptable harm to the development which has been granted planning permission.
13. On the main issue I conclude that the appeal should be allowed and that the planning permission should be varied as set out in the formal decision above.

Harold Stephens

INSPECTOR