



Appeal Decision

Site visit made on 31 July 2017

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 22 August 2017

Appeal Ref: APP/T3535/W/17/3171314

Land off Hogg Lane, Ilketshall St Lawrence, Beccles Suffolk

- 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 Mrs Diane Winn against the decision of Waveney District Council.
 - The application Ref DC/16/3968/FUL, dated 19 September 2016, was approved on 23 November 2016 and planning permission was granted subject to conditions.
 - The development permitted is described as 'replacement of existing shed'.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be for a maximum period of five years from the date of this permission, after which time the structure shall be removed to the satisfaction of the Local Planning Authority and the land reinstated to its former condition.
 - The reason given for the condition is: Having regard to the non-permanent nature of the structure.
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Decision

1. The appeal is allowed and planning permission Ref DC/16/3968/FUL, for the replacement of existing shed at Land off Hogg Lane, Ilketshall St Lawrence, Beccles Suffolk, granted 23 November 2016 by Waveney District Council, is varied, by deleting Condition No 1 and substituting it for the following condition:

1) The development hereby permitted shall commence not later than 3 years from the date of this decision.

Background and Main Issue

2. Planning permission for the replacement shed included a condition requiring the structure to be removed after five years and the land reinstated to its former condition. The reason for the condition, as stipulated on the decision notice, is 'having regard to the non-permanent nature of the structure'. A further explanation for the condition is provided in the Council's submissions. The Council suggests a temporary permission is required due to the ambiguity over the lawful use of the appeal site and thus the effect a proliferation of buildings within it may have on the area. The appellant is seeking the removal of the condition as they consider it is unnecessary. Taking this background into account the main issue is whether the condition is necessary and thus reasonable in the interests of protecting the character and appearance of the area.

Reasons

3. The appeal site encompasses a linear parcel of land located to the east of the village primary school. It is accessed from Hogg Lane by an un-metalled track sited between bungalows. The appeal site is situated in the countryside and is

extensively landscaped. Towards the northern end of the appeal site there is a storage shed and an adjoining hard standing constructed from paving slabs. Beyond this is a chicken coup and store and it is this building that the appellant has been granted permission to replace.

4. From what I observed the appeal site has some of the hallmarks of a leisure plot as it is apparently unconnected to any residence but has the characteristics of a garden with some ornamental planting, domestic fencing, storage and space for leisure activities. The Council suggests the appeal site is currently a leisure plot and considered the planning application on the basis that it is. An Inspector's findings relating to an appeal at the site in 2011 supports the contention that the appeal site is a leisure plot¹. A leisure plot can be a sui generis use. Planning permission would normally be required for a change of use from agriculture to a use that is sui generis. Thus, it is unclear whether the use of the land as a leisure plot would be lawful. The existing use appears well established and I have seen nothing to suggest the Council are currently pursuing enforcement action.
5. To complicate matters further, the site history indicates the land is in an agricultural use with an application made as recently as 2012 for the retention and continued use of an agricultural store², which was approved. Agriculture can include horticulture and I noted the presence of vegetable plots and fruit trees. In this respect, the Council have described the appeal site as a 'large allotment'.
6. Consequently there is ambiguity over the use of the land and, in particular, whether a material change of use from agriculture to a leisure plot has occurred. However, the proposal before me is to replace one storage building with another. This would not affect the use of the appeal site as a whole as the proposed building would be used for ancillary purposes to the use of the land in much the same way the existing building is. Therefore, it is the physical impact of the building that is the main issue.
7. The existing shed proposed for demolition and replacement is located towards the northern boundary of the site in a small compound delineated by timber fencing. It is small in scale, some distance from nearby dwellings and is screened by extensive planting. The structure is low key and is not readily visible or prominent in views from the public realm or surrounding properties, including the nearby footpath to the east of the appeal site or Hogg Lane to the south. The proposed shed would also be diminutive in scale, finished in timber and sited in the same discrete position. It would therefore have a limited presence in the wider countryside that would not amount to harm to the character and appearance of the area. Thus, there is no dispute between the Council and appellant that the proposal would comply with Policies DM02 and DM27 of the DMP³.
8. A proliferation of new domestic style buildings could appear incongruous and unsightly in a rural landscape. However, the proposal is a replacement building and would not therefore introduce an additional structure into the countryside where there is none at present. The Council confirmed that the building would have no cumulative effects on the countryside and I have no reason to disagree.

¹ APP/T3535/A/11/2149971

² Council reference DC/12/1298/FUL

³ Policies to Help Make Decisions on Planning Applications – Development Management Policies – Development Plan Document Adopted January 2011. Policies DM02 and DM27 are broadly consistent with Paragraph 17 of the National Planning Policy Framework.

9. The Council have approved the building, albeit for a temporary period, and therefore it has found the impact on the countryside to be acceptable. It is unclear why the Council considers the impacts arising from the building would be acceptable for five years but for no longer. The appeal site appeared well maintained and there is nothing to suggest the building would deteriorate to the point it became unsightly. It is therefore unclear what harm or impact the Council is attempting to alleviate through the imposition of Condition 1.
10. As the appeal scheme would involve the erection of a building the guidance in the Planning Practice Guide⁴ is relevant. It states that a condition requiring the demolition after a stated period of a building that is clearly intended to be permanent is unlikely to pass the test of reasonableness. There is no indication from the appellant that the proposed building is intended to be temporary and therefore a condition requiring its removal is unreasonable in the absence of substantive justification from the Council.
11. This is particularly so as the proposed building would be replacing an existing structure, which the appellant states has been in situ for ten years and is not the subject of a temporary permission. The Council have not disputed this. Therefore, if this appeal was unsuccessful then a similarly sized building would still remain on site in the same position as that proposed. With this in mind, the removal of the proposed replacement building after a five year period, which would have no materially greater impacts than the existing structure, would be unreasonable.
12. The Council's principal concern appears to be the apparent ambiguity over the use of the appeal site. It suggests a temporary planning permission is justified as the planning circumstances at the appeal site may change over the five year period. Be this as it may, the Council have concluded that there would be no harm arising from the construction of the building and that the proposal is consistent with the development plan. In time the use of the land may or may not be clarified in the ways outlined by the Council in Paragraph 1.9 of its statement, but this does not alter the fact that the Council have found the building to be acceptable regardless of whether it supports an agricultural use or the use of the site as a leisure plot.
13. The wording of the condition is also problematic as it is imprecise. It requires the land to be reinstated to its 'former condition' but this is not defined. Following the erection of the proposed building the former condition of the land would be the existing building. In effect, the condition could reasonably be construed as a requirement to reinstate the existing building at the end of the five year period. This requirement would be unnecessary as it would have little beneficial purpose. The reason for the condition also refers to the 'non-permanent nature' of the structure but I am not satisfied this is an accurate description of the appeal scheme, which would be a building and would therefore have a notable degree of permanence. These are matters also weighing against the retention of the condition.
14. As such, the condition is unnecessary as the proposed building would replace an existing structure that is not the subject of a similar limitation and importantly, the proposed building would adhere to Policies DM02 and DM27 of the DMP, as it would not harm the character or appearance of the countryside. Moreover, the Council have approved the building for a five year period with an inadequate explanation to support such a course of action and the condition is both contrary to

⁴ See Paragraph: 014 Reference ID: 21a-014-20140306

advice in the PPG and imprecise. Taking these points together I conclude that the condition is unnecessary and unreasonable and should therefore be deleted.

Other matters

15. I note that temporary planning permissions have been granted at the appeal site in respect of other buildings. However, the details of these permissions are not before me and therefore I have considered the appeal scheme on its own merits.
16. A number of interested parties have raised concerns over the use and appearance of the appeal site as an apparent leisure plot. The appeal scheme before me is for the replacement of a storage building. It is for the Council in the first instance to determine whether the appeal site is currently a leisure plot, whether that is authorised and then whether it would be expedient to pursue enforcement action.
17. Questions have been raised as to the need for the proposed store, especially as the site does not appear to be in an agricultural use. The Council have not objected to the principle or need for a store and a small store could be considered reasonable for a leisure plot or allotment. Moreover, the appeal scheme is for a replacement storage building rather than a new one. In my view, an entirely new storage building would require additional justification whereas a replacement store of a similar size requires less justification as it would broadly retain the status quo.
18. As the appeal scheme would result in the replacement of one storage building with another of a similar size there would be no material intensification in the use of the land and consequently there would be no harm to highway safety.

Conclusion and Conditions

19. From a consideration of the information presented I conclude that a planning permission granted without Condition 1 would adhere to the development plan. Accordingly, I conclude the appeal should be allowed and the permission varied by deleted Condition 1 and substituting for the standard commencement condition. There is nothing before me to suggest Conditions 2 or 3 should be removed or varied so these are still extant.

Graham Chamberlain
INSPECTOR