



Appeal Decisions

Site visit made on 31 October 2017

by Rory MacLeod BA MRTPI

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

Decision date: 29 January 2018

Appeal Ref: APP/F0114/W/17/3180752

Hay Tor, Old Midford Road, South Stoke, Bath BA2 7DH

- 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 Dr Adrian Done against the decision of Bath & North East Somerset Council.
 - The application Ref 17/00538/FUL, dated 3 February 2017, was approved on 26 May 2017 and planning permission was granted subject to conditions.
 - The development permitted is erection of a single storey side extension.
 - The conditions in dispute are Nos 2 and 3 which state:
 - (2) 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) no extension, external alteration or enlargement of the dwelling(s) or other buildings hereby approved shall be carried out unless a further planning permission has been granted by the Local Planning Authority.
 - (3) 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) no garages or other free standing buildings shall be erected within the curtilage of the dwelling(s) hereby approved, other than those expressly authorised by this permission, unless a further planning permission has been granted by the Local Planning Authority.
 - The reasons given for the conditions are:
 - (2) Any further extensions require detailed consideration by the Local Planning Authority because of the green belt and AONB location.
 - (3) The introduction of further curtilage buildings requires detailed consideration by the Local Planning Authority because of the green belt and AONB location.
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Decision

1. The appeal is allowed and the planning permission Ref 17/00538/FUL for the erection of a single storey side extension at Hay Tor, Old Midford Road, South Stoke, Bath BA2 7DH granted on 26 May 2017 by Bath & North East Somerset Council, is varied by deleting conditions (2) and (3) and is subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 001, Site Location Plan, Schedule of Materials, 003A, 004A and 005A.

Application for costs

2. An application for costs was made by Dr Adrian Done against Bath & North East Somerset Council. This application is the subject of a separate Decision.

Procedural Matters and Background

3. Planning permission has been granted for the erection of an extension at the house. Conditions 2 and 3 remove specified householder permitted development allowances in relation to other extensions and to outbuildings. The appeal relates to the appellant's request to have these conditions removed.
4. The reasons for imposing both conditions relates to concerns about the effect of permitted development on the Green Belt and Area of Outstanding Natural Beauty (AONB). The Council says that these conditions are necessary in order to allow detailed consideration by the Local Planning Authority through the submission of planning applications. The main issue therefore is the effect that removing conditions 2 and 3 could have on the Green Belt and on the AONB.

Reasons

5. Hay Tor is a large detached house set within a substantial curtilage of about 0.48 ha (1.2 acres) positioned close to the site's western boundary. There is an extension infilling part of the gap to this boundary. The permission the subject of this appeal has not been implemented and proposes a larger extension to this side to the full depth of the house and projecting forward of the front wall. There is an open parking area to the north side of the dwelling. The principal front wall faces north where there is an access on to Old Midford Road that runs along the site's northern boundary. There is a hedgerow along this boundary that largely screens the site which is at a higher level by about 1.5m. There are also hedgerows to the site's other boundaries. There is open land to the west and other residential curtilages to the southern and eastern boundaries.
6. Paragraph 200 of the of the National Planning Policy Framework (The Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. This is reinforced by Planning Practice Guidance (PPG) that states that such conditions should only be used in exceptional circumstances, that the scope of such conditions needs to be precisely defined and that area wide or blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
7. Any extension to the house constructed under permitted development allowances would have to adhere to the limitations of Class A to Schedule 2 Part 1 to the General Permitted Development Order 2015 (GPDO). These preclude any extension forward of the front elevation facing the highway. It would be possible to build a substantial single storey rear extension but this would have no greater height and impact on the open land beyond the western boundary than the consented side extension. There is a high hedge to the southern boundary with the dwelling Whitecroft that would screen views of such an extension from this direction. Any first floor rear extension would be limited to a maximum depth of 3m and would be viewed against the mass of the existing dwelling. An extension to the eastern side elevation facing the

main garden could only be single storey and would be set some distance from the site boundaries and therefore would not be readily visible from outside the site.

8. Any garages or other free standing buildings restricted by condition 3 would be constrained by the limitations of Class E to the GPDO if erected under permitted development allowances. These would preclude any outbuilding forward of the front wall. Elsewhere in the curtilage these would be limited to single storey with a maximum height of 4m with a dual pitched roof. As the site is within an AONB, clause E.2. limits the total area of ground covered by buildings to no more than 10 square metres if situated more than 20 metres from any wall of the dwellinghouse. Clause E.3. also precludes any outbuilding situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. The GPDO thereby constrains options for any outbuildings to be located behind a line drawn from the rear wall of the house and if more than 20 metres from the house to have a floor area of less than 10 square metres.
9. However, a substantial outbuilding could be erected close to the house as demonstrated by the appellant's application for a certificate of lawfulness (ref. 17/02240/CLPU). Such a development would have some impact on the appearance and setting of the house in view of its mass. But it would be single storey and given the extent of vegetative screening to all site boundaries and the screening arising from the house itself and the consented extension when viewed from the west, it would not be readily visible from beyond these boundaries. As such, there would be only a limited effect on the character of the open countryside in the surrounding area and no material harm to the AONB. Moreover, the surrounding area is also characterised by other residential curtilages in which there are some outbuildings.
10. The Council has adduced from the recent planning history of the site that there are significant pressures for development at the site. It has not expressly referred to an extension or outbuilding that could otherwise be erected under permitted development allowances that it would specifically seek to preclude. Rather the concern is the exercise of maximum permitted development options in addition to the consented extension which could collectively harm the rural open character in this part of the Green Belt and the AONB.
11. The officer report to the consented extension confirms that 'the design, scale and location of the development would not be harmful to the openness of the Green Belt' and the development 'by virtue of its design, scale, massing, position and use of external materials would not adversely affect the natural beauty of the landscape of the designated AONB'. The extension is thereby considered acceptable in relation to both the Green Belt and to the AONB. But subsequent additions to this are considered to be potentially harmful.
12. To my mind the permitted development permutations available in relation to both extensions and outbuildings indicates that the impact on the Green Belt and on the AONB is unlikely to be greater than that arising from the consented extension that has been deemed acceptable in these respects. Even the cumulative effects of such permitted development additions would appear unlikely to result in such harm to these interests to justify removal of these permitted development allowances contrary to national planning guidance.

13. The house is not a new development and currently benefits from permitted development allowances. Those specified in conditions 2 and 3 would only be removed on implementation of the permission for the extension. But development in accordance with these classes could be built beforehand.
14. The Council has expressed concern that the boundary hedge to the open land to the west of the site could be removed as there is no statutory protection for its retention. It is unlikely that the appellant would seek to have this removed as it provides some privacy and security for the property. It would also soften the appearance and partly screen the consented extension.
15. Both parties have referred to other appeal decisions. I have had regard to these inasmuch as they are relevant to this appeal, but circumstances at the appeal site are different and each case must be considered on its individual merits.
16. My findings are that the exercise of permitted development allowances in accordance with conditions 2 and 3 would not have a significant adverse effect on the Green Belt or on the AONB. These conditions are thereby neither necessary nor reasonable and fail the tests for conditions set out at paragraph 206 of The Framework in these respects. The imposition of these conditions is also contrary to the advice in PPG as there are no exceptional circumstances to justify them.

Conclusion

17. For the reasons set out above, I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed conditions but inserting the non-disputed conditions from the previous permission relating to the time period for commencement and to list the plan numbers that are still relevant.

Rory MacLeod

INSPECTOR