The Planning Inspectorate

Appeal Decision

Site visit made on 5 February 2018

by Rachel Walmsley BSc MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2018

Appeal Ref: APP/J1860/W/17/3183553
The Willows Woodlands Farm, U64211 Astley Burf, Astley Burf DY13 0RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr P Edwards against the decision of Malvern Hills District Council.
- The application Ref 17/00334/FUL, dated 27 February 2017, was refused by notice dated 30 May 2017.
- The application sought planning permission for demolition of existing dwelling (C3) known as 'The Willows' and construction of replacement dwelling positioned out of the flood risk zone (part-retrospective) without complying with a condition attached to planning permission Ref 16/01571/FUL, dated 19 January 2017.
- The condition in dispute is No 15 which states that: *notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no additions, extensions or external alterations shall be made without the submission and subsequent approval of a separate application for planning permission*.
- The reason given for the condition is: *to ensure the character and appearance of the building is maintained to protect the amenities of the area, in accordance with Policies SWDP18 and 21 of the South Worcestershire Development Plan*.

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling (C3) known as 'The Willows' and construction of replacement dwelling positioned out of the flood risk zone (part-retrospective) at The Willows Woodlands Farm, U64211 Astley Burf, Astley Burf DY13 0RX, in accordance with the application ref 17/00334/FUL dated 27 February 2017 without compliance with condition No 15 previously imposed on planning permission ref 16/01571/FUL dated 19 January 2017 and subject to the conditions set out in the attached schedule.

Procedural matter

2. The appellant requested to have a late costs application accepted for consideration. It was decided that the appellant had failed to show that there was good reason for accepting the late costs application and therefore a costs decision does not accompany this Decision.

Main Issue

3. This is the effect removing condition 15 would have on the character and appearance of the area.

Reasons

4. Policy SWDP18 of the South Worcestershire Development Plan (the Development Plan)[1] seeks replacement dwellings in the open countryside, provided the listed criteria are met. Of the criteria listed, parties highlight criterion (iii) as being the most relevant to the appeal concerned. Criterion (iii) states that the replacement of an existing dwelling is acceptable provided that it *is not disproportionately larger than the existing dwelling and will not exceed the size of the original footprint by more than 30%.* The premise of this is to protect the character of a rural area, particularly in locations where traditional dwellings are smaller. This is supported by policies SWDP21 and SWDP25 of the Development Plan which seek development that integrates effectively with its surroundings, including the landscape setting.

5. Planning application 16/01571/FUL was approved for a replacement dwelling. The Officer's Report relating to this application explains that the dwelling would not amount to more than a 30% increase in floorspace and therefore, amongst other considerations relating to policy SWDP18, the development would be an acceptable form of development in the countryside.

6. Notwithstanding this, the application was granted subject to a condition that removed permitted development rights. The justification for this was limited to the reason provided with the condition, to *ensure the character and appearance of the building is maintained to protect the amenities of the area, in accordance with Policies SWDP18 and 21 of the South Worcestershire Development Plan*. This reasoning does not identify the harm that would result if permitted development rights were not removed. In light of the Council's conclusions that the development would be an acceptable form of development within the countryside, I find that condition 15 is inconsistent with the Officer's recommendation and was not, at the time the application was decided, robustly justified.

7. In the appeal documentation, the Council justifies condition 15 on the basis that an unfettered planning permission would be contrary to the underlying objectives of policy SWDP18. No further explanation of this is given, nor is the harm as a result of this in relation to the character and appearance of the area identified.

8. The appeal site relates to a relatively small parcel of land. The site is in a prominent location given the unobstructed nature of the fields around it and the open land between the site and properties in Severn Meadow nearby. That said, buildings are a notable feature of the landscape, a farm adjacent to the site and a predominance of buildings within close proximity create a semi-rural character to the area. There is nothing within the evidence before me to suggest that the site or the land around it is protected by any landscape designations.

9. Under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order) the rear wall of a detached

[1] South Worcestershire Development Plan (Adopted February 2016)

home can be extended notably, subject to meeting the restrictions listed, regarding length, height, roof pitch and materials. Other types of extensions and the land around a house can also be developed without requiring planning permission, subject to conditions. Condition 15 restricts the development of additions, extensions and external alterations. From my own observations of the site I have no doubt that such development would be visible. However, it would be seen within the context of the dwelling on the site and surrounding buildings and therefore would not appear incongruous within the landscape. Furthermore, the restrictions placed on additions, extensions or alterations by the Order would ensure that any development would not appear overly dominant to detract from the semi-rural character of the area. Together with the absence of any specific or substantive evidence before me to suggest that development under the Order would have a harmful effect on the character and appearance of the area, I find that an unfettered permission would not result in undue harm.

10. Policy SWDP18 seeks to restrict the size of dwellings within the open countryside on the basis that larger properties can adversely affect the character of an area as a result of their impact on landscape setting. The lack of reference to permitted development within the policy does not imply that a condition restricting permitted development rights is an inappropriate approach to ensuring that development complies with the policy. However the advice in the Planning Practice Guidance states that conditions to restrict permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Exceptional circumstances have not been demonstrated and my findings above do not constitute such circumstances. Furthermore, I have found that any additions, extensions or alterations permitted by the Order would not have a discernible impact on landscape setting and therefore I find no reason to consider condition 15 necessary.

11. Paragraph 206 of the National Planning Policy Framework (the Framework) sets out the six tests when applying conditions. I have found that condition 15 is not necessary and therefore would not be compliant with the Framework.

12. The Council has restricted permitted development rights on other applications. However, it is clear from the evidence before me that a clear justification and demonstration of harm was given in each of these cases which supported the decision to remove permitted development rights. The same cannot be said for the appeal proposal. Notwithstanding this, as the Council rightly points out, the approach to applying such conditions should be done on a case by case basis. Having considered the evidence pertaining to these applications quoted, I find no substantive correlation between them and the appeal proposal for the matter of precedent to imply dismissing the appeal.

13. In all, therefore, I find that to remove condition 15 would not have a harmful effect on the character and appearance of the area. For the reasons given the proposal would not be contrary to policies SWDP18, SWDP21 and SWDP25 of the development plan.

Conditions

14. In allowing the appeal I am granting permission for the development described. Planning permission 16/01571/FUL will remain intact and therefore implementable too. The guidance in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section

73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by parties.

15. I have imposed a condition specifying the relevant drawings and conditions imposing time limits for the commencement of development as this provides certainty. Conditions relating to materials and detailing, landscaping, boundary treatment and lighting have been imposed in the interests of the character and appearance of the area and landscape setting. Conditions relating to a soakaway, foul drainage and effluent disposal, on-site microgeneration and sustainability measures have been included in the interests of protecting the quality of the environment. A condition to ensure that the access, turning area and parking facilities are provided is necessary to secure the safety of highway users. Hours of construction are included to protect the living conditions of occupiers living close by. Given the location of the development in the countryside, a condition seeking superfast broadband is included.

16. Planning permission 16/01571/FUL granted permission for a (part-retrospective) replacement dwelling, subject to a number of conditions, including condition 3 which requires the partial demolition of the building that exists on site to be undertaken and completed in accordance with Drawing No.1627/10 Rev B within 3 calendar months of the date of the permission. The Council suggests that the appellant is in breach of this condition. In allowing the appeal, planning permission 16/01571/FUL will remain intact and therefore implementable too. On this basis any enforcement action that the Council intends to take will not be hindered by this appeal decision.

Conclusion

17. For the reasons given above, I conclude that the appeal should succeed. I will remove condition 15 of planning consent 16/01571/FUL, in line with the discussion above.

R Walmsley

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby approved shall be carried out in accordance with the 1:2500 location plan and Drawing No. 1627/09 Rev. A and 1627/10 Rev. B, unless otherwise required by conditions attached to this permission.

2. Within three calendar months of the date of this permission, the original dwelling, known as The Willows and identified on the 1:2500 site location plan, together with all associated buildings and structures, shall be demolished. All waste material associated with the works shall be removed from the site and the site shall be returned to surrounding ground levels.

3. The partial demolition of the building that exists on site shall be undertaken and completed in accordance with Drawing No. 1627/10 Rev. B within 3 months of the date of this permission.

4. The external timber cladding, external doors, window frames, fascias, soffits and barge boards shall be finished in a dark colour, details of which shall have been submitted to and approved in writing by the Local Planning Authority. The colour finishes shall be applied in full within three calendar months of the date of this permission and shall remain as such thereafter. All rainwater goods shall be in black and shall remain as such thereafter.

5. Within three calendar months of the date of this permission details of the location of any soakaway have been submitted to and agreed in writing by the Local Planning Authority. Any soakaway should be located no less than 5m from any building or sub-structure and 2.0m from a site boundary. If soakaway drainage is not possible on this site, an alternative method of surface water disposal shall be submitted for approval. The scheme of surface water drainage shall be implemented in accordance with the agreed details and be retained thereafter.

6. Within three calendar months of the date of this permission the applicant shall submit for the approval in writing of the Local Planning Authority a scheme of foul drainage and effluent disposal. The scheme shall be implemented in accordance with the agreed details and be retained thereafter.

7. Notwithstanding the submitted details, within three calendar months of the date of this permission a scheme of landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include a plan detailing the disposition of planting, cross referenced to a schedule listing the species, size and number of plants proposed. The approved scheme shall be carried out within the first available planting season following its approval.

   If within a period of five years from the date of the planting of any tree planted pursuant to this condition that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.

8. Notwithstanding the submitted details, prior to installation on site details of the boundary treatment to be erected shall be submitted to and approved in writing by the Local Planning Authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatment and annotated or accompanied by a schedule specifying the type, height, composition and appearance of boundary treatment throughout the site. The approved boundary treatment shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 2, Part 2 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).

9. Within three calendar months of the date of this permission details of any external lighting of the development shall be submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed in accordance with the approved details and thereafter be retained in that form. There shall be no other external illumination of the development other than that which has been approved.

10. Within three calendar months of the date of this permission the access, turning area and parking facilities shown on the approved site plan shall be provided. These areas shall thereafter be retained and kept available for those users at all times.

11. Demolition/ground works/construction work shall not take place outside the following hours: Monday to Friday 07.30 - 18.00hrs and Saturdays 08.00 - 13.00hrs. There shall be no such work on Sundays or Public Holidays

12. Within three calendar months of the date of this permission details of how the dwelling would receive superfast broadband (or an equivalent service) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved details shall be implemented in accordance with a timetable to be approved in writing by the Local Planning Authority and retained thereafter.

13. Within three calendar months of the date of this permission a scheme to demonstrate on site micro–generation to meet at least 10% of the household's predicted energy requirements from renewable or low carbon sources equivalent shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and retained thereafter.

14. Within three calendar months of the date of this permission, details of sustainability measures (including waste, recycling and water management) to be incorporated into the design of the unit hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and retained thereafter.