



Appeal Decision

Site visit made on 14 May 2019

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday, 09 July 2019

Appeal Ref: APP/J3720/W/19/3220347

Land rear of 3 & 4 Red Horse Close, Tysoe, Warwick CV35 0TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by B & C Hudson and J & D Short against the decision of Stratford on Avon District Council.
 - The application Ref 18/01056/FUL, dated 16 April 2018, was refused by notice dated 6 August 2018.
 - The development proposed is change of use of agricultural land to garden at rear of existing gardens to 3 and 4 Red Horse Close and erection of a domestic shed on the existing garden to no.4 Red Horse Close.
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Decision

1. The appeal is dismissed insofar as it relates to the 'additional land' at the rear of 4 Red Horse Close.
2. The appeal is allowed insofar as it relates to the other elements of the application and planning permission is granted for change of use of agricultural land to garden at rear of existing gardens to 3 and 4 Red Horse Close and erection of a domestic shed on the existing garden to no.4 Red Horse Close at Land rear of 3 & 4 Red Horse Close, Tysoe, Warwick CV35 0TL in accordance with the terms of the application, Ref 18/01056/FUL, dated 16 April 2018, so far as relevant to that part of the development hereby permitted, and subject to the conditions in the attached schedule.

Application for costs

3. An application for costs was made by B & C Hudson and J & D Short against Stratford on Avon District Council. This application is the subject of a separate Decision.

Procedural Matters

4. On my visit I noticed that the development has already taken place. Both appellants have already extended their gardens into the adjacent field up to the Public Right of Way (PRoW) and erected timber ranch-style fencing with stockproof mesh and planted new hedgerow along the boundaries with the field. Close boarded fencing has also been installed along the sides of the extended garden plots. A shed has been erected in the rear garden of No.4. I also noticed that the 'additional land' beyond the PRoW has also been fenced off from the surrounding field with post and wire fencing with hedge planting, a small orchard planted, a gate installed into the rear garden and two pedestrian

timber gates installed to allow public access through the land along the PRoW. However, I must still assess the proposal on its planning merits.

5. It is apparent from the appellants' Statement, submitted plans and correspondence in their Appendix 5, that there is some dispute between the parties as to whether the 'additional land' forms part of the determined application and whether it needs planning permission. Both parties have confirmed the red line plan as Location Plan 350-20-50 (hereafter the 'Location Plan') which includes the 'additional land' but also shows the two parcels of land for the garden extensions outlined yellow and green.
6. The Council has determined the application on the basis that the 'additional land' requires planning permission as a garden extension and I have therefore determined the appeal on this basis. If the appellant wishes to establish the legal status of the 'additional land' he can submit a Certificate of Lawful Development application to the Council, against which there is a right of appeal.
7. The revised National Planning Policy Framework (the Framework) was published in February 2019. I have had regard to it in reaching my decision.

Main Issues

8. The main issues are:

- The effect of the proposal on the character and appearance of the rural area, and
- Whether the proposal would offer significant benefits to the local community.

Reasons

9. The appeal properties are large detached dwellings in a row of three dwellings whose rear boundaries back onto adjacent agricultural land. They form part of a small housing development. In the adjacent field and parallel to the rear boundaries there is a PRoW. The character and appearance of the rural area is a quiet pastoral scene of fields and hedgerows, with the village edge as a backdrop. However, new housing has been built along the field edge with the PRoW and more is under construction, which extends the built form of the village along this countryside edge.
10. The proposal involves a change of use of a small area of agricultural land to garden land for Nos.3 and 4, and erection of post and wire stock-proof fencing and planting of new mixed species hedgerow along the new land boundaries, up to the PRoW. The proposal also includes a further extension of garden of No.4 into the countryside by the enclosure of 'additional land' beyond the line of the PRoW. In addition, there is the erection of a garden shed in the back garden of No.4.

Garden extensions for Nos.3 and 4

11. The extensions of the two gardens into the adjoining field up to the PRoW could have appeared as an incongruous and arbitrary extension into the countryside. However, an adjacent site is currently under construction for housing and its rear site boundary extends up to the PRoW (as is apparent in the appellants' Appendix 4 and aerial photographs in Appendix 7) and would be in line with the

- boundaries of the two proposed garden extensions. Hence the proposed garden extensions would not be isolated and would form a continuous boundary with the adjacent new housing development along this part of the village edge. Views from the PRoW have already been altered by the grant of planning permission for new housing along its route, and the proposed garden extensions would not exacerbate this. As a result, there would not be harm to the character and appearance of the rural area.
12. Notwithstanding the above, the proposed development is not one of the forms of development specifically listed as being acceptable in the countryside under Policy AS.10 of the Stratford-on-Avon Core Strategy 2016 (CS). For all other types of development, the policy requires them to be fully justified, offer significant benefits to the local area and not be contrary to the overall development strategy for the District. The policy does not specify what 'significant' benefits would be, as each development proposal brings its own specific issues that would need to be weighed in the balance against any other relevant matters.
13. There does not appear to be any substantive justification for the proposed garden extensions, other than the appellants wanting to extend their gardens. The need to tidy up an unkept parcel of land which could be seen from the PRoW, would have only arisen after the land had been enclosed. The rear boundaries of the original gardens would have been a hedge, as shown on the plans in the appellants' Appendix 3, so planting a hedge along the new garden boundaries does not bring any additional landscaping or screening benefits. Furthermore, the creation of a sustainable wildlife garden for private use, in the absence of any substantive ecological evidence, would not, in my view amount to a significant benefit to the local area. Therefore, in my view, the appellants have not provided a full justification for the proposal or demonstrated any 'significant' benefits to the local area, as required by Policy AS.10.
14. However, I am not persuaded that a lack of justification and significant benefits would jeopardise the overall development strategy for the District as I have found no harm to the character and appearance of the rural area. Hence, whilst there is some conflict with CS Policy AS.10, the extension of the two gardens up to the PRoW accords with CS Policies CS.5 and CS.9, which collectively seek to ensure that new development does not adversely impact on the landscape and countryside.

The 'additional land'

15. From my observations on site this 'additional land' is an arbitrary extension into the countryside as it does not follow any existing boundaries or landscape features, apart from being adjacent to the appellant's extended garden boundary referred to above. The incongruity of this countryside encroachment is compounded by the fact that the PRoW passes through the 'additional land' and to allow public access along it the appellant has installed two timber pedestrian gates in the new fencing, one at each end of the land. Hence, I find the enclosure and change of use of the 'additional land' is an inappropriate and visually harmful encroachment into the countryside that harms the character and appearance of the rural area.
16. With regards justification and 'significant' benefits to the local area there would be fewer for this 'additional land' than already stated above. The erection of 'quality fencing' , planting of a small orchard and sowing of a wild flower

meadow for biodiversity gain on a small discrete parcel of land in private ownership do not, in my view, amount to 'significant benefits to the local area' as to outweigh the harm I have identified.

17. As there is harm to the character and appearance of the rural area, the lack of full justification and significant benefits weighs against the proposal and would compromise the development plan strategy for minimising the impact on the character on the local landscape. Accordingly, the 'additional land' element of the proposal conflicts with CS Policies CS.5, CS.9 and AS.10.

Garden shed at No.4

18. The garden shed is modest and of a domestic scale. It is located close to the rear of the dwelling of No.4 where it is read against the house. As such it does not visually encroach into the countryside and does not harm its character and appearance. Accordingly, the shed element of the proposal accords with CS Policies CS.5, CS.9 and AS.10, which collectively seek to ensure that new development does not adversely impact on the landscape and countryside.

Other Matters

19. I acknowledge the appellants' concerns with the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.
20. The Council has a 5 year housing land supply, as of 31 March 2018, which the appellants do not dispute. The calculation in its Appendix 1 clearly takes account of the new methodology introduced into the revised National Planning Policy Framework since the 2012 version. Whilst the proposal is not for new housing, the relevant development plan policies can be relied upon.

Conditions

21. The Council has suggested 2 conditions. It is necessary for me to consider whether or not conditions could be imposed to control the risk of future harm. Any condition would have to meet the statutory tests and be necessary, relevant to planning and to the development permitted, enforceable, precise and reasonable in all other respects. I have reviewed the Council's suggested conditions and where necessary and in the interests of precision and clarity I have amended the wording to accord with the Planning Practice Guidance.
22. I have included a condition (condition 1) specifying the relevant plans (following clarification) as this provides certainty as to the extent of the development site and boundary treatments. However, I have not included the Concept Sketch Plan for 4 Red Horse Close because there is no need to control how the appellant landscapes his garden. Landscaping of the rear boundaries can be controlled by the Landscaping plan and a separate condition. Therefore, the Concept Sketch Plan would serve no purpose.
23. The Council has suggested a detailed landscaping condition but of the sort usually found on large developments for developers to implement across the whole site. It also requires implementation of landscaping 'prior to the first occupation of the development' which clearly cannot be the case. However, a landscaping condition is necessary in light of the comments from the County Council's Public Right of Way Officer that cast some doubt on the suitability of what has been planted. But the condition need only relate to Nos.3 and 4

Red Horse Close and their new garden areas (shown yellow and green on the Location Plan). Therefore, I have amended the Council's suggested condition accordingly (condition 2).

24. There is already a condition on the original housing development permission that removes permitted development rights for Class E development (the erection of free-standing structures in the original gardens). I consider it necessary and relevant to limit the encroachment of domestic paraphernalia further into the open countryside and to limit visual harm to the users of the public right of way. Therefore, for this purpose I will impose a similar condition (condition 3) to apply to the proposed garden extensions, shown outlined yellow and green on the Location Plan. The parties are in agreement.
25. Furthermore, as hedge planting and post and wire fencing has been proposed and the appellant has advocated that this would help blend the development in with the adjacent countryside, to which I agree, I consider it necessary and relevant to remove permitted development rights for the erection of any new means of enclosure beyond what is being allowed, to ensure there is no further harm to the character and appearance of the rural area. I have incorporated this into condition 3, in agreement with the parties

Conclusion

26. The appellant has questioned why the Council did not split the decision. The Council chose not to. However, I have the powers to do so should I find parts of the appeal scheme to be acceptable and others unacceptable. Furthermore, the proposed gardens extensions to Nos.3 and 4 and the garden shed to the rear of No.4 are clearly severable, both physically and functionally, from the 'additional land' element of the proposal.
27. Accordingly, for the reasons given above, and having had regard to all other matters raised, I conclude that the appeal should be allowed insofar as it relates to the garden extension for Nos. 3 and 4 and the garden shed to the rear of No.4, but is dismissed insofar as it relates to the 'additional land'.

K. Stephens

INSPECTOR

SCHEDULE OF CONDITIONS:

- 1) The development hereby approved shall be carried out in accordance with the following plans and drawings: Location Plan 350-02-50 (showing the two areas of garden land hereby approved outlined in green and yellow); untitled Landscaping Plan; Fencing Plan; Shed Location Plan and Shed Elevations SECU8X6T PD 1.
- 2) Notwithstanding the details shown on the Landscaping Plan, within 2 months of the date of this decision, further details of the scheme of soft landscaping used for the hedgerows along the boundary with the adjacent field shall be submitted to and approved in writing with the Local Planning Authority. The landscaping scheme shall include: a) planting plans, b) written specifications including cultivation and other operations associated with tree and plant establishment, c) a schedule of plants and trees noting species, plant sizes and proposed numbers/densities.

The approved scheme shall be carried out in the next available planting season (October to March inclusive for bare root plants).

If within a period of five years from the date of the soft planting pursuant to this condition that soft planting is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be replaced by planting as originally approved, unless the Local Planning Authority gives its written approval to any variation. This replacement planting shall be undertaken before the end of the first available planting season (October to March inclusive for bare root plants), following the removal, uprooting, destruction or death of the original trees or plants.

- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other order revoking and re-enacting that order with or without modifications), no sheds or other buildings or structures, walls, fences or other means of enclosure other than those shown on the approved plans shall be erected on or around the land outlined in green and yellow on the location plan 350-02-50. Development shall be carried out in accordance with the approved details.