



Appeal Decision

Site visit made on 21 May 2019

by H Miles BA(hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2019

Appeal Ref: APP/E2205/W/18/3217810

Burnt House Farm, Burnthouse Lane, Smarden, TN27 8PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms G Worrow against Ashford Borough Council.
 - The application Ref 18/00666/AS is dated 30 April 2018.
 - The application sought planning permission for demolition of existing bungalow and erection of replacement dwelling and detached garage (amended detail to permission ref: 05/00543/AS for extensions) without complying with conditions attached to planning permission Ref 10/01687/AS, dated 9 March 2011.
 - The conditions in dispute are Nos 3 and 4 which state that:
 - 3. The garage building hereby approved shall not be used for primary residential accommodation at any time
 - 4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No 2) (England) Order 2008, no development shall be carried out within Classes A-G of Part 1 and Part 2 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior approval of the Local Planning Authority.
 - The reasons given for the conditions are:
 - 3. Such a use would conflict with policy which restricts separate residential use.
 - 4. In the interests of protecting the character and amenities of the locality.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing bungalow and erection of replacement dwelling and detached garage (amended detail to permission ref: 05/00543/AS for extensions) at Burnt House Farm, Burnthouse Lane, Smarden TN27 8PT in accordance with the application Ref 18/00666/AS dated 30 April 2018 without compliance with the conditions previously imposed on the planning permission Ref 10/01687/AS dated 9 March 2011.

Application for costs

2. An application for costs was made by Ms G Worrow against Ashford Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. After the date of submission for this appeal, a new version of the National Planning Policy Framework (the Framework) has been published. No changes have been made to the content directly relevant to the subject matter of this

appeal. Consequently, I consider that no prejudice would occur to any parties as a result of me taking the revised Framework into account in my assessment of the appeal's merits.

4. In their evidence the Council confirms that the removal of condition 3 is not disputed as it restricts a change of use which amounts to development of the land and which would require planning permission. Based on the evidence before me now, I do not disagree with this conclusion. As such, I am satisfied that condition 3 is unnecessary and should be removed.
5. The Council also confirms that in relation to the removal of permitted development rights, due to the specific circumstances at this site and the design of the dwelling, the only part of this condition in dispute relates to Schedule 2 Classes A and E of Part 1 and Class A of Part 2 of the GPDO¹. I am not presented with evidence which leads me to disagree with these conclusions and as such I have considered the appeal on this basis.

Main Issue

6. The main issue is whether the conditions are reasonable and necessary in the interests of the character and appearance of the area.

Reasons

7. Conditions restricting permitted development rights should only be used where there is clear justification to do so. It is put to me that exceptional circumstances at this site include its rural character and appearance, lack of screening, its flat topography and the size of the residential curtilage. And that these features may result in any extensions, outbuildings and fences/walls having a harmful visual impact.
8. The fact that the dwelling has a rural landscape character, is on flat land, and is visible in some public and private views is not so unusual as to amount to exceptional circumstances.
9. In respect of the size of the curtilage, Schedule 2, Part 1, Class A (enlargement, improvement or other alteration of a dwellinghouse) of the GPDO includes limits relating to the size of extensions that would be permitted, therefore this factor would have little influence. In relation to outbuildings, the GPDO requires that under Schedule 2, Part 1, Class E (buildings etc incidental to the enjoyment of a dwellinghouse) any buildings permitted are required to be 'incidental to the enjoyment of the dwellinghouse'. Although a small site may constrain the number/size of outbuildings that could be erected, the size of the curtilage at this site would not make it any more likely that such buildings would be provided than any other large curtilage. Similarly, in respect of Schedule 2, Part 2, Class A of the GPDO (gates, fences, walls etc), while a large site may result in the potential for more fencing, it would not make it any more likely for occupiers to erect partitions within the residential curtilage. Consequently I do not consider that the size of the curtilage provides clear justification as to why these permitted development rights should be restricted in the interests of character and appearance.
10. Whilst additional extensions, walls, fences and outbuildings may have some visual impact, the principle of this development would be established by the

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

GDPO. So, provided they were within the restrictions placed upon them by the Order, they would not be harmful.

11. Consequently there is not a clear justification to restrict permitted development rights in this case and I do not consider that such a condition meets the test of necessity. This condition would not be necessary in the interests of the character and appearance of the area. Therefore, in these respects, it would not be contrary to policy SP1 (Strategic Objectives) or ENV3a (Landscape Character and Design) of the Ashford Borough Local Plan 2030 (Adopted February 2019) or to the relevant advice in the Framework.

Other Matters

12. My attention has been drawn to an appeal decision² relating in part to an appeal against a condition restricting permitted development rights. The full details of this case are not before me, and therefore I afford limited weight to these specific circumstances.

Conditions and conclusion

13. There are two further conditions on the original consent. One is the standard condition relating to time limits for implementation. The second condition requires that the development is built in accordance with the specified materials. It is clear from the evidence submitted that the original consent has been implemented and therefore these conditions are no longer necessary.
14. For the reasons set out above, this appeal should be allowed.

H Miles

INSPECTOR

² APP/G5180/A/00/1044187