
Appeal Decision

Site visit made on 27 November 2019

by R Lankshear BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 December 2019

Appeal Ref: APP/P1133/W/19/3236504

Oak House, West Ogwell, Newton Abbot, Devon TQ12 6EW

- 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 Margaret Brooks against the decision of Teignbridge District Council.
 - The application Ref 19/00987/VAR, dated 14 May 2019, was approved by notice dated 17 July 2019 and planning permission was granted subject to conditions.
 - The development permitted is the removal of condition 3 on planning permission 10/00145/COU (change of use and conversion of swimming pool building to ancillary domestic accommodation with alterations to elevations) to allow use as a separate dwelling.
 - The condition in dispute is No 2 of permission 19/00987/VAR which states that:
"Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Classes A, B, C, D, E, F and G of Part 1 and Classes A and C of Part 2 and Classes A, B and H of Part 14 of Schedule 2 (which includes enlargement, improvement or other alteration of the dwelling, porches, sheds, greenhouses, huts, oil storage tanks, fences and walls, solar panels and wind turbines) shall be undertaken on the premises, other than hereby permitted, or unless the prior express consent of the Local Planning Authority has been obtained".
 - The reason given for the condition is: *"The dwelling is located within the open countryside and any alterations/extensions to the dwelling could have an adverse impact upon the character and appearance of the area and therefore require proper consideration through the planning application process. This condition is required to ensure that the character and appearance of the surrounding area is preserved"*.
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Decision

1. The appeal is allowed and the planning permission Ref 19/00987/VAR for removal of condition 3 on planning permission 10/00145/COU (change of use and conversion of swimming pool building to ancillary domestic accommodation with alterations to elevations) to allow use as a separate dwelling at Oak House, West Ogwell, Newton Abbot, Devon TQ12 6EW is varied by deleting condition No 2.

Procedural Matter

2. In the interests of precision and accuracy and for the avoidance of doubt, I have amended the description of development in the banner heading and decision above to reflect that on the decision notice.

Background and Main Issues

3. Planning permission was granted under permission 2019/00987/VAR, for the removal of condition 3 of permission 10/00145/COU for use as a separate dwelling, including condition 2 the subject of this appeal that has removed permitted development rights for the new dwelling. The Council officer's report and decision notice indicate that the condition is necessary to ensure that any alteration or extension to the existing building is properly considered in relation to its impact upon the character and appearance of the surrounding area. The appellants object to the condition as they consider that exceptional circumstances have not been demonstrated to justify the condition and as such it does not comply with the tests for reasonableness and necessity.
4. Taking the above into account the main issue is whether the condition is reasonable or necessary in the interests of safeguarding the character and appearance of the area.

Reasons

5. The appeal site is located to the southern end of the hamlet of West Oghwell within an area of countryside with open fields and pockets of trees contributing to a verdant and rural character. The property sits adjacent to the road running through the village enclosed by a hedgerow with limited visibility from the road. Distant views of the rear of the appeal site are afforded from the Public Right of Way (PROW) running over rising ground to the south-east.
6. I acknowledge that the site falls within the open countryside, although it is not a protected landscape area. The building itself is not subject of any other form of statutory protection nor does it fall within a conservation area. Whilst views of the rear of the appeal site are possible from the PROW, the building is viewed in the context of several other generally substantial dwellings. To this extent the building is not conspicuous in this setting and is viewed in a spacious context.
7. The provisions of the Framework (paragraph 53) and the advice contained within the Planning Practice Guidance are clear that conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. The officer report and the reasoning for the condition does not clearly articulate the precise reason or circumstances relating to the building and associated land, or why works under permitted development rights would be harmful.
8. The appeal property falls within a rural location and is not overly prominent from public vantage points. In my mind, owing to this, the relative scale of neighbouring properties and in the absence of any statutory protection afforded to the appeal property or surrounding land, the justification provided is insufficiently precise to demonstrate why the wholesale removal of permitted development rights is required. Although I recognise the building's historic ancillary function, the further limited extension of the property as afforded by permitted development rights would not in my view result in an overly large building. Nor would the provision of enclosures or other domestic structures (including those for renewable energy) result in a form of development that would be at odds with the plot size, neighbouring development or the rural character of the area.

9. As such I consider that there is no planning justification to restrict the ability of occupiers of the dwelling to undertake minor additions and alterations afforded by the permitted development rights. I conclude therefore that exceptional circumstances do not exist to justify the inclusion of condition 2 and find the restrictions unreasonable and unnecessary.

Other matters

10. Local residents commented on the planning application that the site falls within an unsustainable location; highway safety concerns; no reason to overturn ancillary function and that it has not been occupied independently as suggested. However, these matters are not before me.

Conclusion

11. For the reasons given above, and considering all matters raised, I conclude that the appeal should be allowed and planning permission varied as set out in the decision.

Robert Lankshear

INSPECTOR