



Appeal Decision

Site visit made on 2 June 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th June 2020

Appeal Ref: APP/R0660/W/20/3244726

Wood Cottage, Leach Lane, Lower Withington SK11 9DY

- 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 Mr William Robinson against the decision of Cheshire East Council.
 - The application Ref 19/3328M, dated 12 July 2019, was approved on 8 November 2019 and planning permission was granted subject to conditions.
 - The development permitted is full permission for a replacement dwelling, detached garage and associated landscape works.
 - The condition in dispute is No 14 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Classes A to E of Part 1, Schedule 2 of the Order shall be carried out"*.
 - The reason given for the condition is: *"To ensure continued control over the extent of further building on the site given the size of the built form hereby permitted compared to the size of the built form being replaced in this Open Countryside location"*.
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Decision

1. The appeal is allowed and the planning permission Ref 19/3328M for full permission for a replacement dwelling, detached garage and associated landscape works at Wood Cottage, Leach Lane, Lower Withington SK11 9DY granted on 8 November 2019 by Cheshire East Council, is varied by deleting condition No 14.

Background and Main Issue

2. As detailed above, planning permission has been approved for the erection of a replacement dwelling on the appeal site. The site falls within land designated as open countryside. The planning application was approved subject of a number of conditions including condition No 14, as detailed above, which removes specified permitted development rights. It is this condition which is the subject of this appeal.
3. The main issue is therefore whether condition No 14 of planning permission 19/3328M is reasonable and necessary taking into account the character and appearance of the area.

Reasons

4. The National Planning Policy Framework (the Framework) at paragraph 55 states that planning conditions should be kept to a minimum and only imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, paragraph 53 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) advises that area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
5. In this case, planning permission has been approved for a replacement dwelling on the site. The planning application was assessed against policy PG6 of the adopted Cheshire East Local Plan Strategy 2017 (LP) which states that in the open countryside replacement dwellings are permitted if they are not *"materially larger than the buildings that they replace"*. I do not disagree with the Council's assessment that the approved replacement dwelling would not be materially larger than the existing dwelling on the site. There would be relative differences in height, volume, footprint and floorspace as outlined in the delegated officer report, but overall the proposed dwelling would not be materially larger.
6. The Council justifies the imposition of condition 14 on the basis that without the restrictions it would be possible to build extensions/outbuildings that would make the approved dwelling materially larger than the dwelling that is on the site now. To this extent, the Council's argument is essentially that any resultant development on the site may not then accord with policy PG6 of the LP. In considering this point, it is important to consider whether permitted development rights exist in respect of the existing dwelling on the site. The Council has confirmed that there is no Article 4 Direction relating to the site and, furthermore, that full permitted development rights for the existing land/dwelling on the appeal site are in place.
7. Given the above, I consider that it is reasonable to take the view that overall, and in relative terms, there would unlikely to be any significant net adverse effect on the character and appearance of the open countryside if permitted development rights were not removed in respect of the approved development. In this respect, the evidence indicates that there would in fact be no identified conflict with policy PG6 of the LP. In this context, I am not persuaded that I have been provided with any clear justification for imposing condition No 14.
8. Furthermore, and in any event, the Council has not demonstrated why development permitted by virtue of the different classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) would actually cause harm to character and appearance of the open countryside. In essence, the evidence indicates that the Council has opted to impose a blanket Class A-E removal of permitted development rights, without clear justification for doing so from a character and appearance point of view. Such an approach is at odds with the PPG.
9. In addition to the above, the Council does not actually dispute the appellant's claim that the approved development would be set within a *"secluded and*

generous plot". Indeed, I was able to see on my site visit that the plot was generous in terms of its size and importantly that it was well screened from public views given surrounding mature trees and vegetation. This is not a particularly sensitive location in the open countryside, and I am satisfied that in this case permitted development alterations and additions could take place on the land without material harm being caused to the intrinsic character and appearance of the open countryside. In this respect, I do not consider that there is any contrary evidence before me which leads me to reach a different view that in the absence of condition No 14, the approved development would recognise the intrinsic character and beauty of the countryside as required by paragraph 170 b) of the Framework.

Conclusion

10. For the reasons outlined above, I find that the condition No 4 is not reasonable or necessary. A clearly justified case has not been made as to why the specified permitted development rights need to be removed. Consequently, I conclude that the appeal should be allowed and that the planning permission is varied by deleting condition No 14.

D Hartley

INSPECTOR