



Appeal Decision

Site visit made on 16 June 2020

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/K2420/W/20/3244583
339 Rugby Road, Burbage LE10 2NB

- 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 Ricky Child against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 19/01079/CONDIT, dated 23 September 2019, was refused by notice dated 19 November 2019.
 - The application sought planning permission for demolition of existing dwelling and the erection of a replacement detached dwelling and detached double garage (revised scheme) without complying with a condition attached to planning permission Ref 19/00413/FUL, dated 26 June 2019.
 - The condition in dispute is No 9 which states that: *Notwithstanding the provisions of Schedule 2, Part 1, Classes A – E inclusive 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 enlargement, improvement or other alteration to the dwelling shall be carried out unless planning permission for such development has been granted by the Local Planning Authority.*
 - The reason given for the condition is: *To safeguard the amenities of neighbouring properties in accordance with Policy DM10 of the Site Allocations and Development Management Policies Development Plan Document (2016).*
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and the erection of a replacement detached dwelling and detached double garage at 339 Rugby Road, Burbage LE10 2NB, in accordance with application 19/01079/CONDIT without complying with Condition No 9 previously imposed on planning permission Ref 19/00413/FUL, subject to the other conditions set out in the Schedule to this decision.

Background

2. In June 2019 planning permission was granted for a new dwelling subject to a series of conditions. In doing so the Council imposed a condition removing permitted development rights for the enlargement, improvement or alteration of a dwelling, additions to the roof and other alterations to the roof, a porch and building or structures incidental to the main dwelling falling within Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GDPO). The application sought to remove these restrictions.

3. I understand that there is a previous permission¹ for a replacement dwelling on the appeal site which was determined under the same development plan policies as with the case before me. Whilst I acknowledge this was a different scheme and I do not have the full details of that approval there was no condition imposed removing similar permitted development rights. In any event, my determination of this appeal is focused on the condition attached to the 2019 permission.

Main Issue

4. The main issue is whether Condition 9 is necessary and reasonable having regard to the living conditions of existing occupiers and the character and appearance of the area.

Reasons

5. Paragraph 53 of the National Planning Policy Framework (the Framework) advises 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) sets out that the removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application are unlikely to meet the tests of reasonableness and necessity.
6. The Council contends that through permitted development, the living conditions of neighbouring occupiers would be impacted upon and future occupants could overdevelop the site and an extended house would not be in keeping with the character and appearance of the area.
7. The site comprises a vacant detached dwelling and associated front and rear garden. The original plot has been sub-divided and a new dwelling constructed fronting St Johns Close. Properties along this side of Rugby Road are generally individual in design and extend across almost the entire width of their plots. Many dwellings in the area appear to have been extended to the side and rear. Plots sizes and depths generally vary due to infill and back land developments in the area.
8. The GDPO includes safeguards to protect the living conditions and character and appearance of the site and surroundings. No particular reasons have been demonstrated as to why in this case those safeguards are insufficient.
9. The property has a suitably sized garden relative to the size of the dwelling which also provides sufficient separation from neighbouring dwellings. The extensions and alterations that could be undertaken would retain an adequately sized garden and would not have an overbearing appearance or result in overlooking. The alterations that could be carried out to the roof would be in keeping with the character and appearance of the area.
10. The extensions and alterations that could be undertaken as permitted development under the provisions of Classes A, B, C, D and E of the GPDO would not result in overdevelopment of the plot as a consequence of its existing overall size. They would not disrupt any distinctive or common features within the street and would be a satisfactory distance from neighbouring properties. In these circumstances removing permitted development rights would not be justified in order to protect the living

¹ Planning permission reference 18/00122/FUL dated 4 July 2018

conditions of neighbouring occupants or the character and appearance of the area.

11. Consequently, the deletion of Condition 9 in full would not conflict with the requirements of Policy DM10 of the Site Allocation and Development Management Policies DPD (2016).

Other Matters

12. I note the representations made to the potential for a day nursery or a house in multiple occupation (HMO). These are not matters related to Condition 9 and therefore outside of the scope of this appeal.

Conditions

13. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. From the evidence before me it appears that conditions 3, 4, 5 and 8 have been discharged. In the interests of clarity, I have set out that the development should be carried out in accordance with the approved details. I have also imposed conditions on the original planning permission that I consider remain relevant.
14. The PPG also indicates that a grant of planning permission under Section 73 should not extend the time period for implementation. I have therefore amended Condition 1 to include the date of the original permission.

Conclusion

15. I therefore have found that the Condition is not necessary or reasonable. For this reason, the appeal is allowed and the planning permission varied by deleting Condition 9.

B Thandi

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than 3 years from 26 June 2019.
- 2) The development hereby permitted shall not be carried out otherwise than in complete accordance with the submitted application details, as follows: Site Location Plan at 1:1250 scale; Block Plan at 1:500 scale; Proposed Site/Landscaping Plan Drawing No. 13/01/19 Rev A at 1:100 scale; Proposed Dwelling Elevations Drawing No. 13/01/19 Rev A at 1:50 scale; Proposed Dwelling Floor Plans Drawing No. 13/01/19 Rev A at 1:50 scale and Proposed Double Garage Floor Plan and Elevations Drawing No. 15/08/18 Rev A at 1:50 scale received by the local planning authority on 30 April 2019.
- 3) The representative samples of the types and colours of materials to be used on the external elevations of the dwelling and garage hereby permitted shall be carried out in accordance with the details submitted under application 19/00882/DISCON approved 18 September 2019.
- 4) The development hereby permitted shall be implemented in accordance with the proposed site and floor slab levels submitted on approved Site Levels Drawing Rev C received by the local planning authority on 25 June 2019.
- 5) The detailed scheme of measures for the protection of trees on site and adjacent to the boundaries of the site to be retained during the course of development shall be carried out in accordance with the details submitted under application 19/00882/DISCON approved 18 September 2019.
- 6) Notwithstanding the provisions of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order) no gates, barriers, bollards, chains or other such obstructions shall be erected to the vehicular access within a distance of 5 metres of the highway boundary and any gates or barriers shall be hung to open away from the highway.
- 7) The development hereby permitted shall not be occupied until such time as the access drive (and any turning space) has been surfaced with tarmacadam, or similar hard bound material (not loose aggregate) for a distance of at least 5 metres behind the highway boundary and, once provided, shall be permanently so maintained at all times thereafter.
- 8) The approved hard and soft landscaping scheme shall be carried out in accordance with the details submitted on Landscaping Plan Drawing No. 13/01/19 Rev A received by the local planning authority on 30 April 2019 in the first planting season following the first occupation of the dwelling hereby permitted. The soft landscaping scheme shall be maintained for a period of five years from the date of planting. During this period any trees or shrubs which die or are damaged, removed, or seriously diseased shall be replaced by trees or shrubs of a similar size and species to those originally planted.