



Appeal Decision

Site visit made on 7 August 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal Ref: APP/P0240/W/20/3250302

Rose Villa Court, Potton Road, Biggleswade SG18 0EP

- 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 John Parker against the decision of Central Bedfordshire Council.
- The application Ref CB/19/03968/FULL, dated 21 November 2019, was approved on 6 February 2020 and planning permission was granted subject to conditions.
- The development permitted is change of use of building from B1 (light industrial) and erection of a glass link to form a dwelling-house together with an existing dwelling (granted prior approval under 13/04031/PADO) with associated garden land. Other operational development to include the insertion of windows and doors and erection of cart shed with parking.

The conditions in dispute are Nos 8, 9, 10 and 11 which state that:

(8) Notwithstanding the provisions of Part 1, Class A, B and C of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extensions, roof enlargement or alterations to the dwelling hereby permitted shall be carried out without the grant of further specific planning permission from the Local Planning Authority.

(9) Notwithstanding the provisions of Part 1, Class E of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no buildings or other structures shall be erected or constructed within the curtilage of the property without the grant of further specific planning permission from the Local Planning Authority.

(10) Notwithstanding the provisions of Part 2, Class A of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no fences, gates, walls or other means of enclosure shall be erected within the curtilage of the property without the grant of further specific planning permission from the Local Planning Authority.

(11) No development shall take place until a scheme has been submitted to and approved in writing by the Local Planning Authority for the provision of fire hydrants and sprinklers at the development unless otherwise agreed with the Local Planning Authority. Prior to the first occupation of the dwelling hereby approved the fire hydrant and sprinklers serving that development shall be installed as approved. Thereafter the fire hydrant and sprinklers shall be retained as approved in perpetuity.

- The reasons given for the conditions are:
 - (8) To control the external appearance of the building/s in the interests of the amenities of the area and to protect the privacy of neighbouring residents.*
 - (9) To control the development in the interests of the visual amenity of the area.*
 - (10) To control the development in the interests of the rural amenity of the area.*
 - (11) In the interests of fire safety and providing safe and accessible developments.*

Decision

1. The appeal is allowed and the planning permission Ref CB/19/03968/FULL for change of use of building from B1 (light industrial) and erection of a glass link to form a dwelling-house together with an existing dwelling (granted prior approval under 13/04031/PADO) with associated garden land and other operational development to include the insertion of windows and doors and erection of cart shed with parking at Rose Villa Court, Potton Road, Biggleswade SG18 0EP granted on 6 February 2020 by Central Bedfordshire Council, is varied by deleting Condition 11 and by deleting Condition 8 and substituting for it the following condition:
 - 8) Notwithstanding the provisions of Part 1, Class A and B of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions or roof enlargements to the dwelling hereby permitted shall be carried out without the grant of further specific planning permission from the Local Planning Authority.
2. For the avoidance of doubt, Conditions 9 and 10 of planning permission Ref CB/19/03968/FULL are not deleted or varied via this decision and remain intact and as stated on the Council's decision notice.

Application for costs

3. An application for costs was made by Mr John Parker against Central Bedfordshire Council. This application is the subject of a separate Decision.

Procedural Matters

4. The Pre-Submission version of the emerging Central Bedfordshire Local Plan 2015-2035 (the CBLP) was submitted to the Secretary of State in April 2018. There is nothing before me to indicate that the CBLP is currently at a stage that should attract anything more than limited weight. I shall consider the appeal on this basis.
5. The Town and Country Planning (Permitted Development and Miscellaneous Amendments) (England) (Coronavirus) Regulations 2020 came into force on 1 August 2020. This had the effect of amending various provisions that are contained within The Town and Country Planning (General Permitted Development) Order 2015 (as amended) (the GPDO). Nevertheless, no substantive changes have been made to the Parts and Classes of the GPDO that are directly relevant to the determination of this appeal. Therefore, it has not been necessary to seek the views of the appeal's main parties.

Main Issues

6. The main issues are:
 - Whether or not Conditions 8, 9 and 10 are reasonable and necessary in the interests of protecting the character and appearance of the appeal property and its surroundings;
 - Whether or not Condition 8 is reasonable and necessary in the interests of protecting the living conditions of neighbouring residential occupiers, having particular regard to privacy; and

- Whether or not Condition 11 is reasonable and necessary in the interests of fire safety.

Reasons

Character and appearance

7. The appeal site is comprised of a rectangular area of land that is setback from and accessed via Potton Road. The two main buildings on-site are of simplistic barn-style and planning permission¹ is in place for works that would involve linking them to form a single dwelling. In fact, one of the buildings has already been converted into residential accommodation following a determination by the Council that prior approval was not required² and, from my reading of the Council's officer report, prior approval³ has been granted (but not yet implemented) for the other main building's change of use to a residential dwelling.
8. Whilst the site is located behind a pair of residential dwellings, its surroundings are inherently rural in their makeup. Indeed, the site is, for the most part, surrounded by agricultural fields and thus existing development upon it has the visual effect of jutting out into the open countryside. From inspection, the site's rear and side boundaries are comprised of timber post and rail fencing and an agricultural barn is positioned not far from the site's rear boundary. I also observed there to exist opportunities to see the site from a range of Potton Road vantage points.
9. Conditions 8, 9 and 10 restrict the future use of a range of permitted development rights related to development within the curtilage of a dwellinghouse as well as to other minor operations. These rights are defined under the GPDO. The relevant Schedule, Parts and Classes of the Order are set out within the wordings of the aforementioned conditions under dispute.
10. As confirmed in the National Planning Policy Framework (February 2019) (the Framework), planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, as set out in the Planning Practice Guidance, a blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission is unlikely to meet the tests of reasonableness and necessity.
11. As regards future work that could be carried out under Part 1, Class A of the GPDO, this would include extensions/enlargements to the dwelling. There are numerous limitations set out within the GPDO as regards the form and position of permitted works. Nevertheless, it is evident that sizable additions, including beyond existing built form to the site's south-eastern side, would be possible. Whilst any enlargement would necessarily be restricted to a single storey and to being constructed from matching materials, such works could still, if sited or designed unsympathetically, appear as harmful encroaching or out of character development in an inherently rural setting. I see clear justification for withdrawing such rights.

¹ CB/19/03968/FULL

² CB/13/04031/PADO

³ CB/17/05363/PADD

12. Similarly, whilst various limitations also apply under Part 1, Class E of the GPDO with respect to outbuildings, there still exists the potential for unduly urbanising and encroaching future development to occur, particularly to the site's south-eastern side, should Condition 9 not be retained. Its retention is thus justified.
13. In terms of future roof additions that could be carried out under Part 1, Class B of the GPDO, I accept the appellant's point that the development granted planning permission is single storey. Nevertheless, pitched roof forms are in place and, whilst these are of relatively shallow pitch, it is not unthinkable that future occupiers could seek to attain useable upper floor space in the future. Dormer additions at roof level would offer the potential to disrupt the buildings' sleek and uncomplicated barn-like style and I see clear justification for withdrawing permitted development rights in this context.
14. As regards other roof alterations permitted under Part 1, Class C of the GPDO, these would only be able to protrude a limited distance beyond roof planes (as specified in the GPDO). Given the site's setback location relative to Potton Road, I consider that further restrictions in this regard would be overly onerous and thus not justified in a character and appearance context.
15. The timber post and rail fencing that I observed to surround much of the appeal site is not visually intrusive and is sympathetic to the site's rural surroundings. To potentially erect taller treatments of a more solid specification would hold the very realistic prospect of having a prominent and harmful visual effect, particularly if positioned to the rear and side boundaries of the site. I see clear merit in withdrawing permitted development rights with respect to Part 2, Class A of the GPDO. The retention of Condition 10 is justified.
16. For the above reasons I find that disputed Conditions 9 and 10 are reasonable and necessary in the interests of protecting the character and appearance of the appeal property and its surroundings. Condition 8 is also reasonable and necessary from a character and appearance perspective, but only in so far as it relates to future works under Part 1, Classes A and B of the GPDO and not in so far as it relates to roof alterations under Part 1, Class C. As such, should Condition 8 be altered in accordance with my reasoning set out above, there would be compliance with Policies CS14 and DM3 of the Core Strategy and Development Management Policies (November 2009) (the CSDMP) and with the Framework in so far as these policies require new development to be appropriate in scale and design to their setting and to respect local context.

Living conditions

17. Condition 8, which restricts the future use of a range of permitted development rights, was imposed, in part, in the interests of protecting the privacy of neighbouring residents. As set out above, the site sits adjacent to two residential properties that are located to the northwest. A fair degree of separation exists between the rear elevations of these neighbouring dwellings and the appeal property and the intervening garden land is well vegetated.
18. Potential future extensions, roof additions or roof alterations do not raise undue concerns with respect to neighbouring living conditions and any possible loss of privacy. This is particularly given the relatively limited extent of potential permitted development opportunities available to the site's northwest portion

under the provisions of the GPDO. It must also be noted that the GPDO already contains provisions with respect to the obscure-glazed specification of any new side-facing wall or roof openings located above ground floor level.

19. For the above reasons I find that disputed Condition 8 is not reasonable or necessary in the interests of protecting the living conditions of neighbouring residential occupiers, having particular regard to privacy. As such, should Condition 8 be deleted, there would be compliance with Policy DM3 of the CSDMP in so far as it requires new development to respect the amenity of surrounding properties. For the avoidance of doubt, this does not alter my findings with respect to the first main issue in this appeal.

Fire safety

20. It is evident that the Council acted to impose Condition 11 having considered a consultation response received from Bedfordshire Fire and Rescue Service (BFRS), which notes that the nearest existing fire hydrant is situated approximately 260 metres from the site's entrance and recommends that fire sprinklers be installed.
21. A Notice (dated 2 April 2020) referring to the passing of plans at the site under the Building Regulations has been provided by the appellant, alongside an email from a Principal Building Control Surveyor (dated 3 April 2020) that confirms that neither a fire hydrant or sprinkler system was asked for due to the availability of Fire Brigade compliant access. Nevertheless, planning and building control are two independent processes. Acceptance from a building control perspective does not automatically mean that a fire safety-related planning restriction should not apply, if adequately demonstrated to be reasonable and necessary.
22. Whilst the BFRS has stated that no residential property should be located further than 90 metres from its nearest fire hydrant and has explained that the extent of water carried in fire appliances is not sufficient to support sustained firefighting in the event of a serious fire, the planning history of the site and the presence of an existing residential unit at the site are material considerations. Importantly, the planning permission that was granted and that is now the subject of this appeal does not have the effect of introducing an additional unit of residential accommodation. Indeed, as alluded to in the Council's Officer Report, the permission's implementation would actually appear to have the effect of removing the potential for two dwellings to be created in line with past successful prior approval applications at the site.
23. In this context, I see no clear justification to impose a requirement for a fire hydrant to be installed. Indeed, I am unaware of any such stipulation having previously been imposed at the site as part of any prior approval consent. Neither is the requirement for a sprinkler system to be installed justified, which in any event would appear to have been put forward as a recommendation rather than as a specific necessary requirement.
24. For the above reasons I find that Condition 11 is not reasonable or necessary in the interests of fire safety. As such, even with Condition 11 deleted, there would be compliance with the Framework in so far as it requires that decisions create places that are safe, inclusive and accessible and which promote health and well-being.

Conclusion

25. For the above reasons the appeal is allowed. I will vary the planning permission by deleting disputed Condition 11, and by deleting and substituting disputed Condition 8. Conditions 9 and 10 are to be retained in their current form.

Andrew Smith

INSPECTOR