



Appeal Decision

Site visit made on 6 October 2020

by Mrs H Nicholls FdA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 October 2020

Appeal Ref: APP/Q1153/W/20/3255052

The Milking Parlour, Higher Wilminstone, Road Past Wilminstone Farm, Wilminstone, PL19 0JT

- 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 Ms I Chambers against the decision of West Devon Borough Council.
 - The application Ref 3694/19/VAR, dated 11 November 2019, was refused by notice dated 2 January 2020.
 - The application sought planning permission for change of use of agricultural land to residential garden without complying with a condition attached to planning permission Ref APP/Q1153/W/19/3223930, dated 11 July 2019.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development relating to Schedule 2, Part 1, Class E and Part 2, Class A shall be undertaken without the express consent in writing of the Local Planning Authority.
 - The reason given for the condition is: A condition restricting permitted development rights is required to allow control over built development which could materially harm the character and visual qualities of the area.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural land to residential garden at The Milking Parlour, Higher Wilminstone, Road Past Wilminstone Farm, Wilminstone, PL19 0JT, in accordance with the application Ref 3694/19/VAR dated 11 November 2019, without compliance with condition number 3 previously imposed on planning permission Ref APP/Q1153/W/19/3223930 dated 11 July 2019 and subject to the following conditions:
 1. The development must be begun not later than 11 July 2022.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1:2500 Site Location Plan and 1:1000 Block Plan.

Main Issue

2. The main issue is whether the condition is necessary and reasonable, with regard to the effects on the character and appearance of the area.

Reasons

3. Condition No 3 of the planning permission granted on appeal withdrew permitted development rights (PD rights) ordinarily conferred by the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) (as amended) for the change of use of land to an area of residential garden. In refusing permission to remove the condition, the Council refers to Policies DEV20 and DEV23 of the Joint Local Plan¹.
4. The Council suggests that without the condition, there would be potential for development to occur that would not conserve or enhance the landscape character of the countryside, thus conflicting with the aforementioned Policies. The Inspector's original decision also sets out that the imposition of the condition was necessary in order to prevent 'material harm' to the character and visual amenities of the area.
5. In my view, uncontrolled development over such an extensive area of garden could result in material landscape character and visual harm, even in such a visually contained setting. Whilst not utilising the specific term 'exceptional', the size of the site was clearly a factor in the consideration of the previous appeal and allowing the use of the land for residential purposes was considered, on balance, to be acceptable. Whilst some degree of residential paraphernalia would have been anticipated, the introduction of large or numerous ancillary buildings was not, and was precluded for such a reason. In my view, owing to the scale of the site, this would have qualified as an exceptional circumstance that would have justified imposing the condition.
6. However, I have considered the necessity of the condition relevant to the site-specific conditions. The PD rights available can only apply if the buildings or enclosures can be provided or constructed in specific locations relative to the orientation of the host building. In this case, the host dwelling, The Milking Parlour, has a westward facing principal elevation containing its front door and features of interest. Despite that it is slightly offset, the extensive area of garden all falls forward of the principle elevation. Therefore, the erection of any buildings or enclosures would be caught by Class E.1 (c) and would not be permitted development in any case.
7. Due to its relationship with the site boundaries and existing buildings, there is little opportunity to add buildings to the side or rear of the host dwelling where they may be permissible otherwise. These factors have also determined the westward facing orientation of the dwelling itself.
8. The separate permitted development right is for the provision of gates, fences, walls under Part 2, Class A. Other than being restricted by their location in relation to a public highway, there are stipulations relating to a maximum height of 2 metres. I do not anticipate that the construction of walls or fences would result in the degree of harm that would be likely to arise from the construction of large or numerous buildings or other incidental structures. The necessity for removing this permitted development right is therefore less obvious and I see no reason for this part of the condition to be maintained.

¹ Plymouth and South West Devon Joint Local Plan 2014 – 2034 (adopted 2019)

Other Matters

9. I note the concerns of residents in relation to highway safety, impacts on living conditions and in relation to potential landscape harm. For reasons set out above, proposals for future incidental buildings or structures on the extended garden would fall to be considered by way of separate planning applications.
10. I note that the appellant has drawn attention to a number of other planning permissions where PD rights were not removed² and that this suggests there is an inconsistency in decision making. Having reviewed the submitted details, I am not persuaded by an inconsistency of approach or that the site-specific considerations would render a different outcome for this case in any event.

Conditions

11. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission. The exception to this is the condition relating to the time limit for the commencement of development, which cannot be extended through an application made under section 73. Accordingly, I shall amend this condition to run from the date of the original permission.

Conclusion

12. Owing to the site-specific conditions, the disputed condition does not satisfy the relevant tests of the National Planning Policy Framework or PPG and should be removed. For the reasons set out above, the appeal is allowed. I have therefore granted a new permission for the development.

Hollie Nicholls

INSPECTOR

² 3721/19/FUL, 0147/20/FUL and 1112/20/FUL