



Appeal Decision

Site visit made on 15 December 2020

by Diane Cragg DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 January 2021

Appeal Ref: APP/B3030/W/20/3259394

Birkhouse, Oxton Hill, Southwell NG25 0RN

- 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 Mr Steve Dunn against the decision of Newark & Sherwood District Council.
 - The application Ref 20/00052/S73, dated 14 January 2020, was refused by notice dated 16 March 2020.
 - The application sought planning permission for minor amendment to previously approved planning application 19/00965 to allow for an additional workshop/garage without complying with a condition attached to planning permission Ref 19/00965/FUL, dated 7 August 2020.
 - The condition in dispute is No 2 which states that: 'The development hereby permitted shall not be carried out except in complete accordance with the following approved plan references: 2512-A2-13a: Site Location Plan 1:1250; Existing Block Plan 1:200 2512-A2-06c: Site Location Plan 1:1250; Proposed Block Plan 1:500 2512-A1-01l: Proposed Ground Floor Plan 1:100; 2512-A1-02k: Proposed First Floor Plan 1:100; 2512-A1-03i: Proposed Second Floor Plan 1:100 2512-A2-05i: Proposed South and West Elevations 1:100; 2512-A2-04k: Proposed North and East Elevations 1:100; 2512-A1-10b: Proposed Roof Plan 1:100; unless otherwise agreed in writing by the local planning authority through the approval of a non- material amendment to the permission'.
 - The reason given for the condition is: 'so as to define this permission'.
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Decision

1. The appeal is allowed and planning permission is granted for minor amendment to previously approved planning application 19/00965 to allow for an additional workshop/garage at Birkhouse, Oxton Hill, Southwell NG25 0RN in accordance with the application ref 20/00052/S73 dated 14 January 2020 without compliance with condition No 2 previously imposed on planning permission Ref 19/00965/FUL dated 7 August 2020, and subject to the conditions set out in the schedule at the end of this decision.

Application for costs

2. An application for costs was made by Mr Steve Dunn against Newark & Sherwood District Council. This application is the subject of a separate Decision.

Background and Main Issue

3. Planning permission has been granted for a replacement dwelling to be constructed at the appeal site¹. With a further permission granted for various alterations to the originally approved scheme². The appellant seeks permission to vary condition 2 of the later planning permission to extend and reconfigure the single storey element of the approved dwelling to provide additional storage and garage space to the front of the building in a courtyard configuration.
4. The main issue is the effect that varying condition 2 would have on the character and appearance of the area.

Reasons

5. The appeal site is a large detached property with detached outbuildings set in a substantial land area located on the south side of Southwell Road. The existing dwelling is set back from the road frontage within landscaped grounds. It is surrounded by countryside to the south, west and east with a detached dwelling, historically connected to the appeal site, located to the north-west.
6. The Newark and Sherwood Landscape Character Assessment (NSLCA) adopted December 2013 identifies the appeal site as falling within the Mid Nottinghamshire Farmlands Policy Zone MN PZ 39 Thurgarton Village Farmlands with Ancient Woodlands. The area around the appeal site displays many of the characteristics identified in the NSLCA. The appeal site contributes positively to the surrounding landscape due to the extensive tree and hedgerow planting within it and is therefore sensitive to change. The existing property sits comfortably within its landscape setting and has limited visibility in the wider landscape from surrounding roads and footpaths.
7. The approved replacement dwelling increases the footprint and floorspace of the existing dwelling by 49% and 27% respectively, whereas the proposed modifications would represent an increase of 77% and 43% of the footprint and floorspace. The Council suggests a limit of 30% to 50% increase to accord with extensions permitted in the Green Belt. However, such parameters are not referenced in Policy DM8 of the Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document (DPD).
8. Policy DM8 requires that in the interests of minimising visual impact on the countryside replacement dwellings should normally be of a similar size, scale and siting to that being replaced, taking account of any potential visual impact created, and, in particular, addressing the requirements of Landscape Character in accordance with Core Policy 13 of the Newark & Sherwood Local Development Framework amended Core Strategy March 2019 (Core Strategy). Policy 13 seeks to ensure that landscape character is protected and enhanced.
9. At the time of my site visit, trees were not in leaf and I had limited opportunities from the front of the appeal site to observe locations and properties elsewhere and from outside the site there were very limited views of the existing building. The approved dwelling would be more visible in the landscape because of the building's length and the placement and height of the

¹ 19/00229/FUL

² 19/00965/FUL

chimneys. The proposed modifications would add very little to the overall visibility of the development from the viewpoints identified and at other positions on the approach roads. Overall, because of the landscape setting and the set back from the road, the proposal would not alter the effect of the approved replacement dwelling in the surrounding landscape in any appreciable way.

10. Policy 9 of the Core Strategy expects new development to be an appropriate form and scale to its context complementing the existing built form and landscape environment. The garage and workshop modifications are at a suitable scale, demonstrably smaller than the main elevation of the proposed house, which would be the most prominent element of the design on the driveway approach, and appropriate to the approved design as part of an extended range of outbuildings associated with the house. I am satisfied that the modifications would not appear incongruous or adversely affect the appearance, design or layout of the approved replacement dwelling.
11. I appreciate that the siting of the garage and workshop may not conform to the design of stable blocks on a typical country house, however, I see no reason why, in the site circumstances, a particular design approach is necessary here.
12. The removal of a Silver Birch and Laurel hedging to accommodate the proposal would not be significant to the overall landscape setting of the appeal site and the proposals would not detract from the site's landscaped environment.
13. I have no reason to question the appellants requirements for the additional accommodation, but nor are the reasons for it a determinative factor in this case.
14. Overall, I conclude that the proposal would not harm or otherwise detract from the character and appearance of the area and would accord with Policies 9 and 13 of the Core Strategy, Policy DM5 of the DPD, which seeks to protect local distinctiveness, and Policy DM8 of the DPD. It would also accord with the National Planning Policy Framework where it seeks to ensure that development is visually attractive as a result of good architecture, is sympathetic to local character and history including landscape setting and recognises the intrinsic character and beauty of the countryside.

Other Matters

15. I note the appellant's reference to a fallback position and the Council's response. However, having regard to my conclusions on the main issue, I have not found it necessary to consider this matter further.

Conditions

16. The Planning Practice Guidance 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. The Council confirm that none of the conditions have been formally discharged.
17. A section 73 application cannot be used to vary the time limit for implementation and for the avoidance of doubt, I have specified the date by which the permission shall begin. I have imposed a condition specifying the relevant drawings to which this approval relates as this provides certainty.

18. To ensure a good standard of design and to protect the character and appearance of the area, I have re-imposed condition 3. It is appropriate to ensure that measures are in place to safeguard and retain hedgerows and trees in order to protect wildlife and visual amenity. Conditions 4, 5, 6 and 7 are therefore re-imposed. Condition 5 is a pre-commencement condition for obvious reasons. I have not been advised that the appellant has previously objected to the imposition of this pre-commencement condition.
19. In order to protect the character and appearance of the countryside the removal of permitted development rights under Class A, B, C and E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) are necessary and reasonable. However, I am satisfied that rights under Class D to construct porches does not need to be removed and I have amended the condition accordingly.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed.

Diane Cragg

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall not begin later than the 7 August 2022.
2. The development hereby permitted shall not be carried out except in complete accordance with the following approved plan reference:
2512-A2-06e: Site location plan 1:1250; Proposed block plan 1:500
2512-A2-01N: Proposed Ground Floor Plan 1:100
2512-A2-10D: Proposed Roof plan 1:100
2512-A1-04L: Proposed East and West Elevations 1:50
2512-A1-05K: Proposed North and South Elevations 1:50
Tree Report
Unless otherwise agreed in writing by the local planning authority (LPA) through the approval of a non-material amendment to the permission.
3. The development hereby permitted shall be constructed entirely of the material details submitted as part of the planning application for 19/00965/FUL and in the email received by the LPA from the applicant on 27th February 2019 and the window casements will be constructed in metal as agreed with the applicant at the site visit of 28 June 2019, unless otherwise agreed in writing by the LPA.
4. To avoid negative impacts to nesting birds, any clearance works of vegetation on site should be conducted between October to February inclusive, outside the bird breeding season. If works are conducted within the breeding season, between March to September inclusive, a nesting bird survey must be carried out by a qualified ecologist prior to clearance. Any located nests must then be identified and left undisturbed until the young have left the nest.
5. No works or development shall take place until an arboricultural method statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the LPA. This scheme shall include
 - a. A plan showing details and positions of the ground protection areas.
 - b. Details and position of protection barriers.
 - c. Details and position of underground service runs and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
 - d. Details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g. in connection with foundations, bridging, water features, hard surfacing).
 - e. Details of construction and working methods to be employed for the installation of drives and paths within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - f. Details of working methods to be employed with the demolition of buildings, structures and surfacing within or adjacent to the root

protection areas of any retained tree/hedgerow on or adjacent to the application site.

- g. Details of any scaffolding erection and associated ground protection within the root protection areas
- h. Details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in full accordance with the approved tree/hedgerow protection scheme. The protection measures shall be retained during the development of the site.

- 6. During the construction period the following activities must not be carried out under any circumstances.
 - a. No fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
 - b. No equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site,
 - c. No temporary access within designated root protection areas without the prior written approval of the LPA.
 - d. No mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
 - e. No soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - f. No stripping of topsoil, excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - g. No topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
 - h. No alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the LPA.
- 7. Unless otherwise agreed in writing by the LPA, no machines shall be used and only hand digging shall be undertaken when excavating beneath the crown spread of any trees on site. Any roots exposed over 25mm diameter, shall be retained, undamaged and protected i.e. from unnecessary damage and drying out. All backfilling over exposed roots shall be of topsoil or washed sand, carefully tamped by hand around and over all roots before continuing to backfill with other materials required for the finished treatment.
- 8. Notwithstanding the provisions of the Town and County Planning (General Permitted Development) (England) Order 2015, other than development expressly authorised by this permission, there shall be no development under Schedule 2, Part 1 of the Order in respect of:
 - Class A - enlargement, improvement or other alteration of a dwellinghouse;
 - Class B - additions etc to the roof of a dwellinghouse;

Class C - other alterations to the roof of a dwellinghouse;
Class E - buildings etc incidental to the enjoyment of a dwellinghouse.