
Appeal Decision

Site visit made on 4 January 2021

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 14 January 2021

Appeal Ref: APP/V0510/W/20/3255550

The Old Paddock, 48B Great Lane, Reach CB25 0JF

- 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 Neville Fletcher against the decision of East Cambridgeshire District Council.
 - The application Ref 20/00494/VAR, dated 9 April 2020, was refused by notice dated 29 June 2020.
 - The application sought planning permission for the demolition of a derelict stable block and construction of a dwelling house without complying with a condition attached to planning permission Ref 16/01008/FUL, dated 8 November 2016.
 - The condition in dispute is No 14 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order), the dwelling shall not be extended in any way, and no structures shall be erected within the curtilage of the dwelling.
 - The reason given for the condition is: To safeguard the character and appearance of the area, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of a derelict stable block and construction of a dwelling house in accordance with the application Ref 20/00494/VAR, dated 9 April 2020, without compliance with condition No 14 previously imposed on planning permission Ref 16/01008/FUL, dated 8 November 2016, subject to the attached schedule of conditions.

Main Issue

2. The main issue is whether the condition is reasonable or necessary to maintain planning control to safeguard the character and appearance of the area.

Reasons

3. The appeal concerns a condition attached to planning permission for a single storey dwelling granted in November 2016. The dwelling, a modern flat roof design, has since been constructed together with an adjacent double garage allowed on appeal in November 2018¹.
4. The bungalow lies on the western outskirts of the village on Bartson Drove, a single track lane which heads towards the open fens. As the lane leaves the

¹ APP/V0510/W/18/3200980

built up area of the village, which is on slightly higher ground, the appeal site provides the first glimpse of the fens in the distance over Catch Water Drain and Blackberry Drove on the other side of the property. Even if there were no views into and across the site, the low profile, compact bungalow and the openness of its curtilage forms an important part of the sensitive edge of the village adjacent to the fens, one of its main characteristics. The site lies about 55 m outside the development envelope of the village as defined by the East Cambridgeshire Local Plan 2015 which remains part of the development plan.

5. Condition No 14 of the current permission states that the dwelling shall not be extended in any way, and no structures shall be erected within its curtilage. Given the sensitive fen edge location extensions to the bungalow and further structures within the curtilage have the potential to urbanise and consolidate built development on the site to the detriment of the character and appearance of the area. The condition is therefore reasonable and necessary to maintain planning control over any future proposals.
6. The appellant argues that the site is well screened but this does not remove the need for proposals to be suitable in their location. Every site is different so similar conditions imposed elsewhere are not relevant. Whilst Planning Practice Guidance (PPG) states that area-wide removal of permitted development rights are unlikely to meet the tests of reasonableness and necessity, in this case the restriction applies to just one property and there is clear justification to do so.
7. However, PPG requires that a condition removing such freedoms should be accurately defined by reference to the relevant order so it is clear precisely which rights have been withdrawn. Condition No 14 does not do this, so it is necessary to reword the condition. To control extensions and alterations to the dwelling Classes A-D of Part 1 should be withdrawn and to control buildings, enclosures and gates/fences in and around the curtilage Class E of Part 1 and Class A of Part 2 should be withdrawn. There is no need to withdraw other rights such as hard surfaces, chimneys, flues or antenna. The ability for the restrictions to be overcome by a further application for planning permission should also be added to the condition, as happened with the double garage.
8. This decision amounts to a new planning permission and therefore the previous conditions should also be attached where they remain potentially relevant. These include listing the approved plans in the interests of certainty, conditions to control contamination and debris entering the highway, to maintain the access, to protect existing and newly planted trees/hedges, to retain the parking/turning area and to control boundary treatments.

Conclusion

9. For these reasons the objective of the condition is reasonable and necessary to maintain planning control to safeguard the character and appearance of the area in accordance with Policy ENV2 of the local plan. However, the condition in dispute is imprecise and the appeal is allowed to substitute a more precisely worded alternative.

David Reed

INSPECTOR

Schedule of Conditions

1. Development shall be carried out in accordance with the drawings and documents listed below:
L(PL)BD.01 version B dated 12th September 2016
Tree Survey dated 8th August 2016
L(PL)BD.03 version B dated 8th August 2016
L(PL)2DM.LO1 version A dated 8th August 2016
L(PL)BD.L02 version B dated 8th August 2016
L(PL)2DM.SO1 version A dated 8th August 2016
L(PL)BD.02 version C dated 12th October 2016
2. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported to the Local Planning Authority within 48 hours. No further works shall take place until an investigation and risk assessment has been undertaken and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken, and following completion of measures identified in the approved remediation scheme a verification report must be prepared and approved in writing by the Local Planning Authority.
3. The proposed drive shall be constructed using a bound material for the first 6 metres into the property from the edge of the highway to prevent debris spreading onto the adopted public highway.
4. Notwithstanding the provision of Class A of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) Order 2015, (or any order revoking, amending or re-enacting that order) no gates, fences or walls shall be erected across the approved access.
5. Except as detailed on the approved plans, no trees shall be pruned or removed/felled and no hedges shall be removed without the prior written approval of the Local Planning Authority.
6. Prior to first occupation or commencement of use the proposed on-site parking and turning area shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plan L(PL)BD.L02 Rev.B and thereafter retained for that specific use.
7. Prior to first occupation or commencement of use a full schedule of all hard and soft landscape works and biodiversity improvements shall be submitted to and approved in writing by the Local Planning Authority. The hard landscaping details shall include hard surfacing materials and any means of enclosure within the site. The soft landscaping schedule shall include, planting plans, a written specification; schedules of plants noting species, plant sizes, proposed numbers/densities; and a detailed implementation programme. It shall also indicate all existing trees and hedgerows on the land and details of any to be retained. The schemes shall also include details of bird and bat boxes to be installed on the site. The works shall be carried out in accordance with the approved details prior to the end of the first planting season following occupation of the development. If within a period of five years from the date of the planting, or replacement planting, any tree or plant is removed, uprooted or destroyed or dies, another tree or plant of the same species and

size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written consent to any variation.

8. No above ground construction shall commence until details of the boundary treatments have been submitted to and agreed in writing with the Local Planning Authority. The boundary treatments shall be in situ in accordance with the approved details prior to the first occupation of the dwelling.
9. No development shall take place until a scheme for the protection during construction of the trees on the site, in accordance with BS 5837:2012 - Trees in relation to construction - Recommendations, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall show the extent of root protection areas and details of ground protection measures and fencing to be erected around the trees, including the type and position of these. The protective measures contained with the scheme shall be implemented prior to the commencement of any development, site works or clearance in accordance with the approved details and shall be maintained and retained until the development is completed. Within the root protection areas the existing ground level shall be neither raised nor lowered and no materials, temporary buildings, plant, machinery or surplus soil shall be placed or stored thereon. If any trenches for services are required within the fenced areas they shall be excavated and backfilled by hand and any tree roots encountered with a diameter of 25mm or more shall be left unsevered.
10. Except as detailed on the approved plans, no trees shall be pruned or removed/felled and no hedges shall be removed without the prior written approval of the Local Planning Authority.
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order), no development permitted by Class A, B, C, D or E of Part 1 or Class A of Part 2 of Schedule 2 of the 2015 Order (as amended) shall be carried out or made to the dwelling or within its curtilage without the grant of a further planning permission by the local planning authority.