

Appeal Decision

Site visit made on 5 January 2021

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2021

Appeal Ref: APP/D3505/D/20/3260111
The Firs, Burstall Lane, Sproughton IP8 3DE

- 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 M Carter against the decision of Babergh District Council.
 - The application Ref DC/20/02634, dated 26 June 2020, was refused by notice dated 10 September 2020.
 - The application sought planning permission for erection of two storey side and rear extension and single storey extension linked to garage without complying with conditions attached to planning permission Ref DC/20/00930, dated 27 April 2020.
 - The conditions in dispute are No 2, which states that: 'The development hereby permitted shall be carried out in accordance with the drawings/documents listed under Section A above and/or such other drawings/documents as may be approved by the Local Planning Authority in writing pursuant to other conditions of this permission or such drawings/documents as may subsequently be approved in writing by the Local Planning Authority as a non-material amendment following an application in that regard. Such development hereby permitted shall be carried out in accordance with any Phasing Plan approved under Section A, or as necessary in accordance with any successive Phasing Plan as may subsequently be approved in writing by the Local Planning Authority prior to the commencement of development pursuant to this condition'; and No 3, which states that: 'Notwithstanding Section 55 (2)(a)(ii) of the Town and Country Planning Act 1990 as amended and the provisions of Article 3, Schedule 2 Part 1 Classes A to E and H and Part 2 Class A 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 further enlargement, improvement, insertion of new openings or other alteration of the dwellinghouse shall be carried out - except pursuant to the grant of planning permission on an application made in that regard'.
 - The reason given for condition No 2 is: 'For the avoidance of doubt and in the interests of proper phased planning of the development'; and for condition No 3 is: 'To enable the Local Planning Authority to retain control over the development in the interests of the amenity of the locality and to safeguard local distinctiveness'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application the subject of this appeal sought permission for amendments to previously approved extensions to the appeal property. These amendments
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involve a single storey extension to the rear of the approved garage and an extension of the first floor roofline to the rear of the approved two storey eastern side extension. The extended roofline allows for the incorporation of a first floor rear-facing balcony. The proposal also includes reinstatement of permitted development rights afforded by Class E (buildings incidental to the enjoyment of a dwellinghouse) of the Town and Country Planning (General Permitted Development) (England) Order 2015, which were removed as part of the original permission.

Main Issue

3. The main issue is the effect of the proposed variation of the conditions on the character and appearance of the host dwelling and surrounding area.

Reasons

4. The appeal property is a two storey detached dwelling located in a rural setting. There are some residential and commercial properties dispersed along the opposite side of Burstall Lane, while the appeal property has no neighbouring buildings to the east on the same side of the lane and substantive separation from the nearest dwelling to the west. The surrounding land is open countryside and the site lies within a Special Landscape Area (SLA).
5. The approved extensions had largely been completed at the time of the inspection. The extended dwelling has a broadly rectangular plan form across two storeys with an adjoining single storey garage set back from the rear of the western side. The proposed change to this side is an extension of the single storey dual-pitched garage roof to almost double its current depth. This extension would be open-sided with supporting posts to cover an outdoor kitchen.
6. Due to the highly open setting to the side and rear of the dwelling, the extension behind the garage would be visible from views along Burstall Lane to the west. However, it would have a single storey profile and therefore limited height, while the open sides would reduce its bulk, solidity and presence. As such, despite the additional depth to the rear, this element of the overall proposal would not be a prominent or incongruous addition to the extended dwelling and so it would not be harmful.
7. To the other side, the proposal involves the extension of the two storey roofline and upper storey to create a balcony. This feature would extend outwards from the rear of the property and would be highly visible in the open setting approaching along Burstall Lane from the east. Due to its prominence because of its height at upper storey level and the additional depth which would upset the otherwise regular built form of the extended dwelling, it would be an incongruous and uncharacteristic feature. Its visibility and prominence would be particularly harmful in the open landscape setting which is designated as an SLA.
8. The appeal property has a relatively large curtilage, which extends into the open land to the sides and rear. Given this open setting with no other buildings nearby, and the fact that there is additional visual sensitivity due to the site's location in an SLA, I agree with the Council that there is a need to control the siting of outbuildings. This will ensure that any potential adverse effects in the

sensitive landscape setting are avoided. I have had full regard to policy in the National Planning Policy Framework (the Framework), which says in this regard that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so¹. In this case, for the reasons given, such justification does exist.

9. Accordingly, for the above reasons, I conclude that the proposed variation of the conditions would have an unacceptably harmful effect on the character and appearance of the host dwelling and surrounding area, or the potential to cause such harm. Consequently, the proposal is contrary to the following development plan policies: CN01 of the Babergh Local Plan 2006, which requires development to be of an appropriate scale and form for the location; CR04 of the Local Plan, which says that development in SLAs will only be permitted where it is designed to harmonise with the landscape setting; CS01 of the Babergh Core Strategy 2014 concerning sustainable development; and CS15 of the Core Strategy, which requires development to respect local context and character. These policies are consistent with the Framework. Policy HS33 of the Local Plan, also referred to by the Council, has not been provided to me.

Other Matters

10. I have had regard to all the representations made by interested parties. These do not, however, raise any additional matters in relation to the main issue in this appeal that would lead me to reach a different overall conclusion.
11. The appellant contends that a previous consent for a larger replacement dwelling further north would result in greater harm than the current proposal. However, I am required to consider the proposal before me on its individual merits. Moreover, it is not clear whether this earlier permission is extant and given that the dwelling has already been extended, it seems unlikely that it would be replaced. As such, this does not represent a credible 'fallback' to the current proposal.
12. I note also the concerns about procedural issues, including whether a site visit should have been undertaken by the Council. Any such concerns about procedural issues are properly for the Council to consider and are outside the scope of this appeal. Therefore, while I have had full regard to these other matters, they do not have a direct bearing on the outcome of the appeal.

Conclusion

13. For the reasons given above and having regard to all other matters raised, it is concluded that the appeal should be dismissed.

J Bell-Williamson

INSPECTOR

¹ Paragraph 53.