



Appeal Decision

Site visit made on 19 January 2021

by Elaine Benson BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2021

Appeal Ref: APP/J3720/W/20/3261304

Orchard Nurseries, Duck Lane, Welford On Avon, Stratford-upon Avon CV37 8QH

- 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 David Findon against the decision of Stratford-on-Avon District Council.
 - The application Ref 20/01005/VARY, dated 14 April 2020, was approved on 3 August 2020 and planning permission was granted subject to conditions.
 - The development permitted is variation of conditions 2 (approved plans), 4 (material samples), 5 (hard and soft landscaping), 6 (boundary treatments), 8 (existing and proposed levels), 9 (foul and surface water), 13 (land contamination), 15 (fire hydrants), 16 (external lighting), 17 (landscape management plan).
 - The condition in dispute is No 19 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting what Order with or without modification) no development covered by Schedule 2 Part 1 Classes A, B, C, D, E, F, G and H shall be carried out without planning permission granted by the Local Planning Authority.
 - The reason given for the condition is: To prevent harm being caused to the amenity of the area in accordance with the provisions of Policies CS.1, CS.8, CS.9 and AS.10 of the adopted Stratford-on-Avon Strategy (2011-2031) and NDP Policies HE4, HE5, HE6, HLU1 and HLU2.
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Decision

1. The appeal is allowed and the planning permission Ref 20/01005/VARY, for the variation of conditions 2 (approved plans), 4 (material samples), 5 (hard and soft landscaping), 6 (boundary treatments), 8 (existing and proposed levels), 9 (foul and surface water), 13 (land contamination), 15 (fire hydrants), 16 (external lighting), at Orchard Nurseries, Duck Lane, Welford On Avon, Stratford-upon-Avon CV37 8QH granted on 3 August 2020 by Stratford-on-Avon District Council is varied by deleting condition 19.

Application for costs

2. An application for costs was made by Mr David Findon against Stratford-on-Avon District Council. This application will be the subject of a separate Decision.

Main Issue

3. The main issue is whether the disputed condition is reasonable or necessary in the light of national policy and guidance and any relevant local policy in order to prevent harm being caused to the amenity of the area.

Reasons

4. Planning permission was granted on appeal in 2018 for the erection of 5 dwellings at the Orchard Nursery site (Ref APP/J3720/W/17/3188131). A later proposal for the development of 9 dwellings under reference 19/01751/FUL was approved by the Council in 2019. No conditions removing permitted development (PD) rights from the dwellings were imposed on either planning permission. The current appeal application sought a number of changes to the 19/01751/FUL consent. Most elements were approved on 3 August 2020 when the disputed condition 19, which removes PD rights, was imposed.
5. The National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. Furthermore, the Planning Practice Guidance (PPG) states that conditions restricting the future use of PD rights or changes of use may not pass the test of reasonableness or necessity. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is clear exactly which rights have been limited or withdrawn. It further advises that blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
6. The Council committee report for the appeal application advises that the Ward Member and Parish Council raised no objection to the proposal, subject to the withdrawal of PD rights for additional alterations or additions to the approved dwellings (although there is evidence that the Parish Council later supported the proposal without the condition). The officer considered this approach to be 'reasonable and necessary', with no other justification provided in the committee report. However, other evidence indicates the justification for the condition was to prevent the installation of additional windows and dormers in order to protect privacy and to control outbuildings and domestic paraphernalia across the site in order to protect the rural character of the area and to prevent the erosion of the gap between Welford on Avon and Weston on Avon.
7. The principle of the development of the site and its layout has already been accepted and the amount of built development would be reduced. The site is large and the development would be spacious, thereby limiting any harmful overlooking. Areas of garden and open space, including a wild meadow area, would maintain the separation between Welford on Avon and Weston on Avon for the preservation and identity of the 2 settlements. There is no evidence to indicate that the implementation of PD rights would reduce or otherwise harmfully affect the gap between the 2 areas which NDP Policy HE6 seeks to retain.
8. I am not convinced that there are any exceptional circumstances which justify the blanket removal of these PD rights. Indeed, in the previous appeal decision the Inspector rejected the limitation of 'certain PD rights' as suggested by the Council, having had regard to the space around the dwellings and the variation of their design. No exceptional circumstances to justify the withdrawal of PD rights were identified at that time. Furthermore, the Council's 2019 approval of planning permission in did not withdraw PD rights, notwithstanding that the proposal was for more dwellings. There are insufficient differences between

that scheme and the current appeal scheme so as to warrant withdrawing PD rights.

9. Moreover, as well as preventing the erection of new structures, the wholesale removal of PD rights would prevent future maintenance, alterations or improvements of the dwellings, including hard surfaces, garden structures, microwave antennae and chimneys. These restrictions would be unduly onerous, are unjustified by the evidence and do not meet the tests of reasonableness and necessity.
10. There is little convincing evidence to indicate that Condition 19 is necessary in the interests of the amenity of the area which is the formal reason for the imposition of the condition. The condition is imprecisely defined and I am satisfied that its imposition is unreasonable and unnecessary. The removal of the disputed condition would create no conflict with Policy HE6 and or other development plan policies and would be consistent with the provisions of the Framework.

Conclusion

11. For the reasons given above I conclude that Condition 19 does not meet the relevant tests for conditions and should be deleted. Accordingly, the appeal should succeed.

Elaine Benson

INSPECTOR