



Appeal Decision

Site visit made on 17 November 2020

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2021

Appeal Ref: APP/C3620/W/20/3249853

The Chalet, Vann Farm Road, Ockley RH5 5TF

- 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 Ben Nicholas against the decision of Mole Valley District Council.
 - The application Ref MO/2019/2049/CC, dated 16 November 2019, was refused by notice dated 13 January 2020.
 - The application sought planning permission for demolition of existing dwelling and erection of one 2-bed dwellinghouse without complying with conditions 4 and 5 attached to planning permission Ref MO/2019/1608/PLA, dated 9 September 2019.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - 4) *Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions within Schedule 2, Part 1, Classes A, B, or C to any dwelling hereby permitted shall be erected.*
 - 5) *Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no building or enclosure, swimming or other pool, within Schedule 2, Part 1 Class E, shall be carried out on the land the subject of this planning permission.*
 - The reasons given for the conditions are:
 - 4) *To control any subsequent enlargements in the interests of the visual and residential amenities of the locality, in accordance with Mole Valley Local Plan policy ENV22 and policy CS14 of the Mole Valley Core Strategy [and to restrict the enlargement of dwellings in this rural area in accordance with Mole Valley Local Plan policy RUD7]*
 - 5) *To protect the character and amenities of this rural area, in accordance with the advice contained in the National Planning Policy Framework [Mole Valley Local Plan policy RUD8 and policy CS14 of the Mole Valley Core Strategy.*
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Decision

1. The appeal is allowed, and planning permission is granted for erection of one 2-bed dwellinghouse at The Chalet, Vann Farm Road, Ockley RH5 5TF in accordance with the application Ref MO/2019/2049/CC dated 16 November 2019 without compliance with condition numbers 4 & 5 previously imposed on planning permission Ref MO/2019/1608/PLA dated 9 September 2019 and subject to the following conditions previously imposed:

- 1 The development hereby permitted shall be carried out and in accordance with the submitted documents and plan 0206.1; 0206;2*
- 2 The development hereby permitted shall be begun before the 9 September 2022.*
- 3 Prior to any above ground works commencing, details to reduce the carbon emissions of the predicted energy use of the development hereby permitted by at least 10% through the on-site installation and implementation of decentralised and renewable or low-carbon energy sources shall be submitted and approved by the Local Planning Authority and be implemented prior to the first occupation of the development.*

Main Issues

2. Whether the disputed conditions are reasonable and necessary in the interests of the character, appearance and amenities of the area

Reasons

3. The existing property is a detached single storey timber building located to the rear of the plot. Planning permission has recently been granted for a replacement dwelling (MO/2019/1608/PLA) and the imposition of restricted permitted development rights conditions to that approval is the matter of dispute. The permitted development rights removed are Class A (extensions), Classes B and C (roof alterations) and E (buildings within the curtilage) of Part 1 Schedule 2 of the General Permitted Development Order (GPDO).
4. It is noted by both parties that the original planning permission for the property imposed conditions removing permitted development rights. However, there is no evidence before me with regards to the original justification for the removal of permitted development rights.
5. Paragraph 55 of the National Planning Policy Framework (the Framework) indicates that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Furthermore, paragraph 53 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
6. The replacement dwelling is to be located further forward in the plot, and it is noted the reason for doing so is to allow for a larger rear garden area. Currently all the garden, apart from a small strip, is to the front of the property. Nevertheless, even in the new location a substantial open area is to be retained in front of the property, and I agree with the parties that the visual impact of the dwelling on the surrounding area would be low.
7. The site lies within the Countryside but beyond the Green Belt. It has a rural character but is part of a cluster of built form along the eastern side of the lane. However, there is separation between the buildings and in my view any potential impact in terms of residential amenity would also be limited.

8. Development plan policies ENV 22¹ and CS14² seek to protect the character of the area. Policies RUD7 and RUD8 of the Local Plan respectively relate to the extension and replacement of dwellings in the countryside. Both place limits on the scale of development in terms of not being disproportionate additions or not materially larger.
9. The appellant points out that these policies do not indicate that replacement dwellings must have permitted development rights removed. It is however noted that the supporting text indicates that these policies do not distinguish between dwellings in different size plots and that small dwellings in large plots form part of the range of dwellings in the countryside which require protection.
10. Local Plan policy ENV3 indicates that the countryside will be protected for "its own sake", and development adversely affecting its open character will not be permitted. I agree with the appellant that this does not reflect the Framework which at paragraph 170 requires that decisions should recognise the intrinsic character and beauty of the countryside, but it is not a blanket protection. I also concur with the appellant's position that the GPDO provisions provide flexibility to householders for additions and are fully applicable to properties in the countryside outside protected area.
11. I accept as noted by the Council that GPDO Class A could potentially allow for side and rear extensions, the latter being up to 8m, and together with outbuildings under class E there could potentially be significant enlargements. Nevertheless, Planning Policy Guidance is clear 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.
12. The appellant suggests that the impact of executed permitted development rights would be limited having regard to the low ridge, small footprint and existing screening to the site. With reference to the design of the building, its siting and the character of the area I agree with this assessment. Additionally, no specific harm has been identified by the Council in relation to the opportunities to extend the roof, which would be subject to the limitations of classes B and C.
13. In my view the GPDO provisions in relation to this property are unlikely to have a significant adverse impact on the visual amenities and character of the area such that there would be conflict with Local Plan policies ENV22 and CS14, and there is therefore no clear justification for removing permitted development rights in relation to the replacement dwelling.
14. Both parties have referred to other appeal decisions which I have noted. Nevertheless, each case is to be considered on its own merits and in this case, there is no evidence before me, which in my view, amounts to exceptional circumstances. I therefore conclude that the conditions are unnecessary.
15. As this is an application under section 73 it is necessary to repeat the conditions of the original planning permission. However, section 73 cannot extend the time of an application and therefore condition 2 is revised so that development must commence within 3 years of the date of the original permission. I have also amended the wording of condition 1 to just refer to the

¹ Mole Valley Local Plan (Local Plan)

² Mole Valley Local Development Framework Core Strategy DPD (Core Strategy)

approved plans for compliance as a planning condition cannot require a development to be completed, and therefore I have removed that wording.

Conclusion

16. For the reasons given above and taking into account all other considerations, I conclude that the appeal should be allowed, and a new planning permission granted without conditions 4 and 5 previously imposed.

G Ellis

INSPECTOR