



Appeal Decision

Site visit made on 21 January 2021

by Cullum J A Parker BA(Hons) MA MRTPI IHBC

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

Decision date: 24 February 2021

Appeal Ref: APP/E2205/W/20/3258588

Latarna, The Pinnock, Pluckley TN27 0SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Sullivan against the decision of Ashford Borough Council.
 - The application Ref 20/00200/AS, dated 3 February 2020, was refused by notice dated 15 June 2020.
 - The application sought planning permission for *Erection of a two storey detached dwelling (retrospective)* without complying with a condition attached to planning permission Ref 19/00801/AS, dated 17 September 2019.
 - The condition in dispute is No 5 which states that:
A 1.5 m high native hedge shall be planted behind the dwarf wall along the boundary with the street in the next planting season following the date of this decision. It shall be maintained at no lower than 1.5m. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the Local Planning Authority give prior written consent to any variation.
 - The reason given for the condition is : *In order to protect and enhance the amenity of the area.*
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Decision

1. The appeal is allowed and planning permission is granted for *Erection of a two storey detached dwelling (retrospective)* at Latarna, The Pinnock, Pluckley TN27 0SP in accordance with the application Ref 20/00200/AS made on the 3 February 2020 without complying with condition No5 set out in planning permission Ref 19/00801/AS granted on 17 September 2019 by Ashford Borough Council, but otherwise subject to the following conditions set out in Appendix A of this decision.

Background and Main Issue

2. The appeal site has a detailed planning history that has been provided within the written submissions and I have not sought to reiterate that here. Put simply, when planning permission was granted for the two-storey dwelling condition 5 required the planting of a 1.5 metre high native hedge behind the dwarf wall along the boundary with the street.

3. Instead a hedge of approximately 1 metre in height has been planted/grown¹. The Council considers that this does not provide a 'timely and effective form of screening to the development resulting in visual harm to the amenity of the area'.
4. The main issue is the effect that varying the condition would have on the character and appearance of the area.

Reasons

5. The appeal site is occupied by a two-storey contemporary house located on a corner plot within Pluckley Thorne. Along part of the frontage there is low grey painted wall with yew hedge located behind it. At the time of the committee report the hedge was around 1 metre high. The Council's Tree Officer confirmed that Yew can grow at a rate of 400mm per year²; so in theory the height of the hedge could be in the region of at least 1.5 metres in the near future.
6. The Local Planning Authority's professional planning officers recommended to the committee a condition that would require the hedge planted to be retained at a height of no lower than 1.5 metres. This approach seems an entirely sensible and logical way in which to address the fact that the hedge planted was not to the correct height of at least 1.5 metres, as per the originally worded Condition 5 of permission 19/00801/AS.
7. Paragraph 55 of the Framework sets out various requirements in how planning conditions should be imposed, in addition to the national Planning Practice Guidance (PPG). I agree with the Council that a condition requiring a hedge in this location is necessary in order to ensure that, whilst architecturally contrasting in its main built form and style, the development's front boundary would reflect some of those found locally with a hedge.
8. Whilst the extant hedge does not replicate the height of a previous hedge on the location that was around 2 metres in height, it would nonetheless seek to reinforce such features within the local street scene. In this respect, I find that the proposed changes would ensure that the hedge would accord with Policy ENV3 of the Ashford Borough Local Plan which seeks to ensure that developments have particular regard to the retention of existing features.
9. As such, I find that the rewording of Condition 5, as suggested in Appendix A of the Council's statement would ensure that the planted/retained hedge once it has grown to the required height within 24 months will be kept at a height of no lower than 1.5 metres. This would serve to have a positive impact on the character and appearance of the area, and therefore the condition should be varied as proposed.
10. I acknowledge the suggested wording set out in Paragraph 1.10 of the Appellant's Statement of Case. However, the wording suggested by the Council would provide certainty to ensure that the hedge grows to a height of 1.5 metres within 24 months, whereas the Appellant's wording would not

¹ See Paragraph 20 of the *Ashford Borough Council; Report of the Head of Planning and Development - Planning Committee 3rd June 2020*.

² See Paragraph 21 of the *Ashford Borough Council; Report of the Head of Planning and Development - Planning Committee 3rd June 2020*.

necessarily secure this. I have also added additional wording which would specifically require the hedge's retention in order to provide clarity.

11. I note the concerns raised by interested parties, including local residents and the Parish Council, including the design of the main dwelling. However, it is not in my remit in an appeal such as this to consider the acceptability of the proposal which was approved by the Borough Council. Rather my role here is to consider the conditions imposed.
12. The guidance in the PPG 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. As I have limited information before me about the status of the other condition(s) imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
13. With regard to those remaining relevant, I am unclear as to how Condition 10 suggested by the Council is necessary given that local planning authorities have powers under the Planning Acts to enter onto land and buildings for inspection. As such, I do not consider that such a condition should be imposed on the new planning permission this decision creates.
14. For the reasons given above, I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly. I will grant a new planning permission without one of the originally imposed conditions (No. 10) and substituting Condition No.5 with the wording suggested by the main parties and restating those undisputed conditions that are still subsisting and capable of taking effect.
15. For the avoidance of doubt, allowing the appeal creates a 'new' planning permission that sits alongside the original permission, and it is for the relevant parties to determine how to proceed thereafter.

Cullum J A Parker

INSPECTOR

Appendix A – List of Conditions imposed

1. The development shall be carried out in accordance with the following plans: PA01 Site Location Plan, PA16 Roof Plan, PA17 Ground Floor Plan PA18 First Floor Plan, PA20 South and South East Elevations, PA21 West and South West Elevations, PA22 North and North West Elevations, PA23 East and North East Elevations, PA24 Sections, PC11 Landscape and drainage plan as amended by E-mail from David Sullivan dated 12/9/19, PC12 Cycle and bin storage plan and elevations and fence elevation, PC13 Materials schedule, PC14 Materials schedule cont., PC15 Under tile vent system detail, PC16 Eaves detail, PC17 Gable detail, PC18 Roof and louver details, PC19 Entrance canopy and floor detail.
2. The drainage works shall be maintained in accordance with the details approved under application reference 19/00801/AS.
3. The vehicle and cycle parking provided in accordance with Drawing No. PC11 shall be retained for ancillary parking of motor vehicles and access to the facility shall not be precluded.
4. The electric vehicle charging point shall be retained available, in a working order for the charging of electric vehicles.
5. The existing Yew hedge located to the rear of the low wall facing the highway shall be maintained at a height no lower than 1.5m within 24 months of the date of this decision. Thereafter it shall be retained and maintained at a height of 1.5 metres. Any trees or other plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.
6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, no development shall be carried out within Classes A-E of Part 1 and Class A of Part 2 of Schedule 2 of that Order (or any Order revoking and re-enacting that Order), without prior written approval of the Local Planning Authority.
7. The rendered dwarf wall along the road frontage shall be maintained in a dark grey colour in perpetuity.
8. The bound surface shall be permanently maintained for the first 5m of the access from the edge of the highway.
9. The cycle and bin stores shall be retained and kept available for such uses for the duration of this development.

****END OF CONDITIONS****