The Planning Inspectorate

Appeal Decision

Site Visit made on 25 May 2021

by R E Jones BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/Y3940/W/21/3268583
Tenacity, Hoggington Lane, Southwick, Trowbridge BA14 9NR

- 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 Giuseppe Melillo against the decision of Wiltshire Council.
- The application Ref 20/08688/VAR, dated 2 October 2020, was refused by notice dated 9 December 2020.
- The application sought planning permission for erection of two dwellings (revised version of application 18/05825/FUL), without complying with a condition attached to planning permission Ref 19/06506/FUL, dated 12 September 2019.
- The condition in dispute is No 4 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted*.
- The reason given for the condition: *In the interests of the amenity of the area and the character and appearance of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.*

Decision

1. The appeal is allowed, and planning permission is granted for erection of two dwellings (revised version of application 18/05825/FUL) at Tennacity, Hoggington Lane, Southwick, Trowbridge BA14 9NR in accordance with application ref 20/8688/VAR, dated 2 October 2020, without compliance with condition 4 previously imposed on planning permission Ref 19/06506/FUL, dated 12 September 2019 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. Planning permission was granted at the site in 2016 for the demolition of poultry sheds and the erection of two dwellings (Ref 16/0814/FUL). A later proposal for two dwellings that modified the previously consented scheme (Ref 19/06506/FUL) (the original permission) was approved by the Council in 2019. A condition (condition 4) removing some permitted development (PD) rights from the dwellings was imposed on the original permission. The current appeal application sought to remove that condition.

3. An earlier application under reference 20/04689/VAR successfully sought the removal of condition 8 (passing bays) from the original permission. For the purposes of this appeal I have dealt with the removal of condition 4 as it relates to the original permission, as that is how the Council determined the scheme.

Main Issue

4. 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 character and appearance of the area.

Reasons

5. The appeal site consists of two detached dwellings with associated garages, located within large plots. During my site visit it was noted that the dwellings are substantially complete, albeit construction work is ongoing.

6. The appeal site is located at the far end of Hoggington Lane, amongst existing farmsteads, stable/equine buildings and a short line of dwellings. The intervening spaces between the buildings comprise agricultural field enclosures, existing hedges and trees. The combination of the surrounding landscaping and the buildings gives the immediate area surrounding the appeal site a semi-rural character.

7. 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 (GPDO), so that it is clear exactly which rights have been limited or withdrawn.

8. In its officer's report, the Council considers that the large size and bulk of the dwellings within this semi-rural location and the moderate scale of the existing housing opposite the site, justifies the removal of permitted development rights for extensions and enlargements to the dwellings. They have not explicitly stated, in condition 4, which classes of the GDPO are restricted. However, based on the Council's case, I have understood that the restrictions relate to Classes A - D which cover the enlargement or improvement of a dwelling house, additions or alterations to a dwelling's roof, and the erection of entrance porches outside a dwelling's external door.

9. The restrictions contained within these classes put a limit on the size and height of the extensions that may be permitted. If those additions were carried out on the appeal dwellings they would not project excessively from the sides or rear, nor would they be allowed to exceed the height of the roof line. Moreover, front extensions built under the PD rights place further limitations on the size and extent to which additions can protrude from the dwelling's primary elevation. Therefore, in this context the possible works that could be carried out under Classes A-D would appear subordinate to the dwellings and it is improbable that they would fundamentally alter their scale or appearance to any harmful degree.

10. Extensive landscaping has been approved along the boundaries of the dwellings and once this is established it will provide some screening of the sides and rear elevations. Moreover, the degree of visual protection would be increased, by the existing structures nearby which would help screen and mask any additions built under the PD rights from longer distant views. I also noted during my site visit that whilst the surrounding landscape is attractive, the adjacent agricultural fields, paddocks, trees and hedgerow would not be particularly sensitive or at risk of harm from the type of new additions that could be built under Classes A-D. Therefore, in light of the scope of what could be built and the characteristics of the

surroundings, I do not consider that condition No 4 is necessary to prevent visual harm to the surrounding area.

11. There is little convincing evidence to indicate that condition 4 is necessary in the interests of the character and appearance 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 Core Policies 51 and 57 of the Wiltshire Core Strategy, adopted January 2015. These, amongst other things require proposals to protect the character of the local landscape.

Conditions

12. Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the previous planning permission, unless they have already been discharged. Where conditions suggested to me by the Council are still relevant, I have amended them were necessary in accordance with the Panning Practice Guidance (PPG).

13. The plans condition is necessary as the development has commenced and must be completed in accordance with the listed drawings in the Decision. I have also incorporated, the approved Ecological Assessment into this condition.

14. I have repeated the condition relating to the implementation of hard and soft landscaping. This is considered necessary to control the appearance of the trees and hardstanding areas around the building and the surrounding area. I have also reinstated the condition relating to the control of external lighting. This would be necessary to safeguard local ecological interests. For similar reasons I have included the suggested condition that requires the existing hedgerows around the site to be retained. The condition relating to the completion of surfacing works to the site access prior to occupation has been repeated in the interests of highway safety.

15. Since the development was nearing a state of completion at the time of my site visit, I have not imposed a time limit condition.

16. I have not included the conditions of the original permission that relate to the submission and approval of materials, hard and soft landscaping, land contamination, and foul and surface water drainage, as these have been approved and discharged by the Council. Furthermore, I have not included the condition relating to passing bays as this has been removed by a recent permission (ref 20/04689/VAR).

Conclusion

17. For the reasons given above I conclude that Condition 4 does not meet the relevant tests for conditions and should be deleted. Accordingly, the appeal should succeed.

R E Jones

INSPECTOR

Schedule of Conditions

1 The development hereby permitted shall be carried out in accordance with the following drawings and information: Ground floor plan and elevations plot one scale 1:100 dwg no. REAP/01 A; First floor plan and elevations plot one scale 1:100 dwg no. REAP/02 A; Ground floor plan and elevations plot two scale 1:100 dwg no. REAP/03 A; First floor plan and elevations plot two scale 1:100 dwg no. REAP/04 A; Location plan and garage plans and elevations scale 1:2500 and 1:100 dwg no. REAP/05 (dated 5 July 2019) Site plan scale 1:500 dwg no. REAP/06 A; Dwg no. A099035 - SK01 at Inset 2, Ecology Assessment report by Stark Ecology Ltd, dated March 2016.

2 All soft landscaping (approved by ref 19/09156/DOC) shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, 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 otherwise agreed in writing by the local planning authority. All hard landscaping (approved by ref 19/09156/DOC) shall also be carried out prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

3 The development hereby permitted shall not be first occupied until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

4 No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Note 1 for the reduction of obtrusive light 2020", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

5 The existing hedgerows on the south-east and north-east sides of the development hereby permitted will be retained and protected from damage from the date of this planning permission and at all times thereafter throughout the construction and lifetime of the development.

*****End of Schedule*****