



Appeal Decision

Site visit made on 8 June 2021

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2021

Appeal Ref: APP/B3410/W/21/3270974

Pipers Croft, Wood Lane, Uttoxeter, ST14 8JR

- 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 & Mrs Jones against the decision of East Staffordshire Borough Council.
 - The application Ref P/2020/00289, dated 12 March 2020, was approved on 16 February 2021 and planning permission was granted subject to conditions.
 - The development permitted is erection of a replacement dwelling.
 - The condition in dispute is No 15 which states that:
(15) Notwithstanding the provisions of Classes A, B and C, of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order revoking and re-enacting that Order, the replacement dwelling hereby permitted shall not be extended or altered where any such extension and/or alteration relates to any first floor accommodation or above or is more than 4 metres in height above the approved finish ground levels (as shown on the approved plans listed at condition 2 above) unless planning permission has first been granted by the Local Planning Authority.
 - The reason given for the condition is:
(15) To comply with development plan policies for the erection of replacement dwellings and to safeguard the character and appearance of the locality in accordance with East Staffordshire Local Plan Policies SP1, SP8, SP24, DP1, DP3 and DP4, made Uttoxeter Neighbourhood Plan Policies D1 and E2, the East Staffordshire Design Guide, and the National Planning Policy Framework.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted for a replacement dwelling at the site on 16 February 2021, subject to a number of conditions. In particular, condition 15 removes certain permitted development rights from the proposed dwelling, including for all extensions and alterations above ground floor level or above 4 metres in height. The appeal seeks to remove this condition so that the full range of permitted development rights are available to the proposal.
3. In that context, the main issue is whether the disputed condition is reasonable and necessary in order to preserve the character and appearance of the area.

Reasons

4. The site has been subject to a previous dismissed appeal¹ that also related to a replacement dwelling. That scheme was found to be far more obtrusive in the

¹ APP/B3410/W/19/3235916

landscape than either the existing dwelling or a separate scheme approved under permission Ref P/2015/00817. Accordingly, the appeal was dismissed, in part due to a conflict with Detailed Policy 4 of the East Staffordshire Local Plan (2015). This policy states that replacement dwellings in the countryside will only be approved where the proposal is not significantly larger or more intrusive in the landscape than the dwelling it replaces.

5. In coming to that view, the previous Inspector did not accept that the proposed dwelling would be similar in scale to the fallback position established by an extant permission plus permitted development rights. In this regard, it was noted that the proposed dwelling would also benefit from permitted development rights, and that it would not be reasonable to remove these by way of a planning condition. That approach was justified with reference to the Planning Practice Guidance ('PPG'), which stated that "*conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances*"².
6. However, that guidance has now been superseded and it no longer forms part of PPG. Instead, the most recent version of PPG states that "*conditions restricting the future use of permitted development 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*"³. This represents a significant departure from the guidance considered by the previous Inspector. In particular, there is no longer a requirement to demonstrate "*exceptional circumstances*" in imposing such a condition.
7. The disputed condition allows for greater control to be applied to the size and bulk of the replacement dwelling. This is necessary to ensure that the proposal does not become more obtrusive in the landscape than either the existing or approved dwelling, in accordance with Detailed Policy 4. Were it to be removed, then the proposed dwelling could be significantly extended so that it would be comparable in scale to the scheme rejected by the previous Inspector. The disputed condition is precisely defined, and is clearly necessary in order to ensure that the proposal complies with development plan policy.
8. For the above reasons, I conclude that the disputed condition is both reasonable and necessary in order to preserve the character and appearance of the area. Its removal would therefore be contrary to Strategic Policy 24, and Detailed Policies 3 and 4 of the East Staffordshire Local Plan (2015).

Conclusion

9. For the reasons given above I conclude that the appeal should be dismissed.

Thomas Hatfield

INSPECTOR

² Paragraph Ref: 21a-017-20140306 (now superseded)

³ Paragraph Ref: 21a-017-20190723