



Appeal Decision

Site Visit made on 8 June 2021

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/V0510/W/20/3265195

Walnut Tree Cottage, 8 Back Lane, Wicken, CB7 5YL

- 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 Alastair Kidd against the decision of East Cambridgeshire District Council.
 - The application Ref 20/01257/VAR, dated 22 September 2020, was refused by notice dated 19 November 2020.
 - The application sought planning permission for a 4 bed detached dwelling and garage at Walnut Tree Cottage, 8 Back Lane, Wicken, CB7 5YL without complying with a condition attached to planning permission Ref 18/00861/FUL, dated 5 September 2018.
 - The condition in dispute is No 12 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order amending, revoking or re-enacting that Order), the dwelling shall not be extended in any way, and no structures shall be erected within the curtilage of the dwelling.
 - The reason given for the condition is: To safeguard the character and appearance of the area, in accordance with policy ENV2 of the East Cambridgeshire Local Plan 2015 and LP22 of the Submitted Local Plan 2017.
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Decision

1. The appeal is allowed, and planning permission is granted for a 4 bed detached dwelling and garage at Walnut Tree Cottage, 8 Back Lane, Wicken, CB7 5YL in accordance with the application ref 20/01257/VAR dated 22 September 2020, without complying with condition number 12 attached to planning permission ref 18/00861/FUL dated 5 September 2018, and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council's Submitted Local Plan 2017 has been withdrawn, and its policies therefore carry no weight in the determination of this appeal.
3. The house had been constructed and occupied at the time of my site visit. I have determined the appeal accordingly.

Main Issue

4. The main issue is whether the condition is reasonable and necessary, having regard to the effect of its removal on the character and appearance of the area.

Reasons

5. Policy ENV 2 of the East Cambridgeshire Local Plan 2015 (the LP) requires that development be designed to a high quality, enhancing and complementing local distinctiveness and public amenity by relating well to existing features and introducing appropriate new designs. Policy ENV 1 of the LP requires that development be informed by, be sympathetic to, and respect the capacity of defined distinctive character areas including, where possible, enhancing the settlement edge.
6. The approved dwellinghouse is a large 1.5 storey building with a detached garage offset to the front of the site. It is a prominent feature in the street scene, occupying a wider plot than dwellings on the other side of the street. The site falls outside of the development envelope. However, with No 7 Lode Lane and the house currently under construction on the site between No 7 and the appeal site it forms a continuous residential frontage along this part of Back Lane. While outside the development envelope of Wicken, the dwelling lies at the edge of the built up area of the settlement with open countryside to its rear.
7. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order) does not contain any language requiring that dwellings outside of defined settlements be subject to the removal of their permitted development rights. The National Planning Policy Framework states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so. National planning practice guidance advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
8. The Order restricts development between a dwelling and the highway so that generally extensions and outbuildings must be built to the side or rear of the house. The house and garage fill much of the width of the plot, and any extension or outbuilding built under the property's Class A or Class E permitted development rights would therefore have a limited presence in the street scene.
9. The appeal site includes a rear garden that, at the time of my visit, was open to the countryside beyond. That open countryside extends a significant distance to the edge of National Trust land. Given this intervening distance, the impact of any permitted development works would be negligible when seen from the National Trust land.
10. Extensions and outbuildings built under permitted development would be visible from neighbouring properties on Back Lane and Lode Lane. However, the scale of such development is limited by the Order with strict size limits on extensions, and outbuildings being limited in height and having to be incidental to the enjoyment of the dwellinghouse. Such works would not therefore be out of keeping with the general residential character of this part of Back Lane.
11. Other works, such as the erection of gates, boundary walls or hardstandings, would also need to fall within the limits imposed by the Order to be permitted development. Given the surrounding residential properties, any such works would not be out of keeping with the area.

12. There are several listed buildings in the vicinity of the appeal site, the closest of which is at 25 North Street, on the opposite side of the road. In accordance with the statutory duty set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 I have paid special regard to the desirability of preserving the setting of these listed buildings. That setting comprises, in part, the general domestic character of this part of Wicken, including the appeal site and the new house that has been built on it. Any permitted development works carried out at the appeal site would necessarily be of a scale in keeping with that domestic character of the site and surrounding area. It would not therefore result in unacceptable harm to the setting of the listed buildings.
13. The condition in dispute is therefore neither reasonable nor necessary, having regard to the effect that permitted development works would have on the character and appearance of the area and the requirements of Policies ENV1 and ENV2 of the LP.

Other Matters

14. My attention has been drawn by both main parties to other decisions taken regarding new houses, and whether or not the permitted development rights were removed when permission was granted. With regards to the permission granted between the appeal site and No 7 Lode Lane, the curtilage of that property extends to the National Trust land, which differs from the appeal site. The site at 12 Back Lane lies between existing properties, which was not the case at the appeal site when that permission was granted. The site at Reach occupies a more isolated location on the outskirts of that settlement compared to the appeal site. With regards to other approvals by the Council in Wicken, very little information has been provided regarding the nature of the proposals or their locations. In any case, every appeal must be determined on its own merits and, given the above considerations I have only given limited weight to these other decisions in determining this appeal.
15. Development at the site may have been carried out without complying with conditions on the original permission. However, that is a matter between the developer and the Council and is not a consideration in the determination of this appeal.

Conditions

16. National planning practice guidance states that the relevant conditions from the original permission should be repeated when permission is granted under Section 73. Those conditions that have not been identified as discharged are therefore also imposed on this decision, other than the condition requiring commencement within three years of the permission as the house has already been built. If some others have in fact been discharged, that is a matter which can be addressed by the main parties.

Conclusion

17. For the reasons set out above the appeal succeeds, and the original permission is varied as set out in the formal decision and schedule of conditions.

M Chalk

INSPECTOR

Schedule of conditions

1. Development shall be carried out in accordance with the drawings and documents listed below

Plan Reference	Version No	Date Received
01/1995/18		22nd June 2018
02/1995/18		22nd June 2018
03/1995/18		22nd June 2018
04/1995/18		22nd June 2018
05/1995/18		22nd June 2018
06/1995/18		22nd June 2018
07/1995/18		22nd June 2018
08/1995/18		22nd June 2018

2. In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported to the Local Planning Authority within 48 hours. No further works shall take place until an investigation and risk assessment has been undertaken and submitted to and approved in writing by the Local Planning Authority. Where remediation is necessary, a remediation scheme must be submitted to and approved in writing by the Local Planning Authority. The necessary remediation works shall be undertaken, and following completion of measures identified in the approved remediation scheme a verification report must be prepared, and approved in writing by the Local Planning Authority.
3. The materials to be used in the construction of the external surfaces of the hereby approved development shall be as specified on drawing no's. 05/1995/18 and 08/1995/18. All works shall be carried out in accordance with the approved details.
4. The boundary treatments hereby permitted shall be constructed in accordance with the details specified on drawing no. 02/1995/18. The boundary treatments shall be in situ and completed prior to the first occupation on the site. All works shall be carried out in accordance with the approved details and retained thereafter.
5. Prior to first occupation of the hereby approved development, sufficient space shall be provided within the site to enable vehicles to enter, turn and leave the site in forward gear and to park clear of the public highway. The area shall be levelled, surfaced and drained and thereafter retained for that specific use.
6. The access and all hardstanding within the site shall be constructed with adequate drainage measures to prevent surface water run-off onto the adjacent public highway and retained in perpetuity.
7. The surface water drainage scheme, as shown on drawing no. 02/1995/18, shall be implemented prior to first occupation of the hereby approved development.
8. Any removal of vegetation, including the patches of bramble scrub in the centre of the site, shall be conducted under watching brief by a qualified ecologist, in order to remove any animals to safety in the unlikely event that any are discovered.

9. Construction times and deliveries, with the exception of fit-out, shall be limited to the following hours: 08:00am - 18:00pm each day Monday-Friday, 08:00am - 13:00pm Saturdays and none on Sundays or Bank/Public Holidays.
10. The first-floor roof lights in the eastern roof plane of the hereby approved garage shall be glazed using obscured glass and any part of the window(s) that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The window(s) shall be permanently retained in that condition thereafter.
11. The first-floor roof light in the western roof plane of the hereby approved dwelling shall be glazed using obscured glass and any part of the window(s) that is less than 1.7m above the floor of the room in which it is installed shall be non-opening. The window(s) shall be permanently retained in that condition thereafter.