



Appeal Decision

Site Visit made on 11 August 2021

by Andrew Owen MA BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

Appeal Ref: APP/P1045/W/21/3275783

Dunwood, 37 Buxton Road, Sandybrook, Ashbourne DE6 2AQ

- 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 Stewart Scothern against the decision of Derbyshire Dales District Council.
 - The application Ref 21/00134/VCOND, dated 1 February 2021, was refused by notice dated 30 April 2021.
 - The application sought planning permission for use of land as residential curtilage without complying with a condition attached to planning permission Ref 07/00621/FUL, dated 20 August 2007.
 - The condition in dispute is No. 3 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no buildings, structures, extensions, fences, gates, walls or any other means of enclosure shall be erected within the curtilage of any dwelling without the prior written approval of the Local Planning Authority upon an application submitted to it."*
 - The reason given for the condition is: *"To ensure the satisfactory appearance of the development and to safeguard the openness of the countryside setting to comply with General Development Strategy Policies 2, 3 and 4 and Environment Policies 1 and 17 of the Derby and Derbyshire Joint Structure Plan and Policies SF4, SF5, H8, NBE8 and NBE26 of the Adopted Derbyshire Dales Local Plan (2005)."*
-

Decision

1. The appeal is allowed and planning permission is granted for use of land as residential curtilage at Dunwood, 37 Buxton Road, Sandybrook, Ashbourne DE6 2AQ in accordance with the application Ref 21/00134/VCOND dated 1 February 2021, without compliance with the conditions previously imposed on planning permission 07/00621/FUL dated 20 August 2007.

Preliminary matter

2. The phrase 'residential curtilage' is used in the Council's decisions as describing the use of the land. Although 'curtilage' is not a use of land, the Council consider it sufficiently precise. I have therefore also used this description in my decision above.

Main Issue

3. The main issue is the effect of the development on the character and appearance of the area.

Reasons

4. The appeal site accommodates a detached dwelling set centrally in a substantial plot. Neighbouring houses along this part of Buxton Road are similarly detached and, with the land opposite being largely agricultural, the vicinity primarily has a rural character. The houses to the rear, on Windmill Lane, are set out in a distinctly linear form and are at a higher density lending a more urban aspect.
5. The site itself is well screened from the road by trees and bushes, and there is also significant vegetation on the side boundaries. The rear boundary is hedged and although it varies in height as it borders a number of back gardens, it is generally over two metres in height. Most notably, the site is sloped with the land at the rear being significantly higher than the part on which the house sits, which is higher than the front of the site.
6. The forms of permitted development restricted by the current condition fall into three groups: extensions to the existing buildings; the erection of means of enclosure; and the construction of new building or structures. The appellant seeks to remove this condition completely with the effect that the dwelling would have the full range of rights under the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (hereafter the 'GPDO') available to it.
7. Any extensions to the dwelling, or the existing outbuildings, that would ordinarily fall within the limits of permitted development would be limited in scale by virtue of the limitations set out in the GPDO, would mostly be concentrated in the centre of the site, and so would most likely be imperceptible beyond the site boundaries.
8. Similarly, the provision of any means of enclosure that would fall within permitted development limits would be shorter than, and most likely be overdominated by, the existing vegetation along the boundaries. The visual impact on the area of such development would be limited.
9. Given the terms of the GPDO, the effect on the character and appearance of the area of any outbuildings erected under permitted development rights could be greater than the other forms of development detailed above. However, under the limitations of the GPDO, no outbuildings could be forward of the house, and any to the rear or alongside the dwelling would be limited in their height and most likely, practicably, the topography of the site. Consequently, the effect of any outbuildings on the rural character of the area would not be harmful.
10. The national Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. For the reason given above, I consider it is not necessary to withhold permitted development rights from the property to maintain the rural character and appearance of the area. As such the development accords with policies S4, PD1 and PD5 of the Derbyshire Dales Local Plan which all aim to ensure development protects the character of the landscape.

Other Matters

11. Although the reason for refusal refers to the impact on residential amenity the Council provide no further detail on this in their officer report or Statement of Case. However, concerns have been raised from neighbours on Windmill Lane and St Monica's Way towards the rear. One such concern is that the appellant may erect outbuildings in connection with his motor trade business, as demonstrated by the recent history of applications for a garage/store on the property. However, to constitute permitted development, any outbuildings must be for purposes incidental to the enjoyment of the house, which would prohibit any large scale commercial operation.
12. Furthermore, any permitted development building would be limited in height and/or distance from the boundaries. So although outbuildings would possibly be visible from neighbouring properties towards the rear, they would be single storey, on a lower ground level, and so would be unlikely to impact on neighbours living conditions, such as their outlook or privacy, unacceptably.

Conditions

13. The guidance in the PPG makes it clear that decision notices for the grant of planning permissions under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council advise that it is not necessary to impose the other two conditions from the original planning permission which relate to the commencement of development and the planting of replacement trees. I agree that it is not necessary to require replacement trees to be planted and that, as the development has already commenced, it is not necessary to add a commencement condition.

Conclusion

14. The development accords with the development plan taken as a whole and there are no other material considerations to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given above and having had regard to all other matters raised, the appeal is allowed.

Andrew Owen

INSPECTOR