



Appeal Decision

Site visit made on 14 January 2022

by David Reed BSc DipTP DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st January 2022

Appeal Ref: APP/X1925/W/21/3278786

Hillcrest, Bogmoor Road, Shaftenhoe End, Barley, Royston SG8 8LD

- 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 G & Mrs A Kennion against the decision of North Hertfordshire District Council.
 - The application Ref 21/01194/S73, dated 14 April 2020, was refused by notice dated 23 June 2021.
 - The application sought planning permission for single storey side extensions and two-storey rear extension, raising of roof, insertion of two rear dormer windows and two front rooflights to provide first floor accommodation, chimney to side elevation and front porch without complying with a condition attached to planning permission Ref 12/00823/1HH, dated 12 June 2012.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended no development as set out in Classes A to E (inc) of Part 1 of Schedule 2 to the order, (or any subsequent Statutory Instrument which revokes, amends and/or replaces those provisions) shall be carried out without first obtaining a specific planning permission from the Local Planning Authority.
 - The reason given for the condition is: Given the nature of this development, the Local Planning Authority considers that development which would normally be "permitted development" should be retained within planning control in the interests of the character and amenities of the area.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the condition is reasonable or necessary to maintain planning control to safeguard the character and appearance of the area.

Reasons

3. The appeal concerns a condition attached to planning permission for various extensions and alterations to an existing bungalow granted in June 2012. These included single storey side extensions, a two-storey rear extension, raising of the pitched roof and dormer and rooflight windows to provide accommodation in the roof space. The works have been carried out.
4. The property occupies a substantial plot in the hamlet of Shaftenhoe End, a scattered group of houses in a rural setting well outside the main built-up area

of Barley. On the edge of the hamlet, the property, as its name suggests, occupies high ground which drops down to the east towards the stream which forms the county boundary. Although the now two-storey detached house is partially screened by hedgerow boundaries, its frontage onto Bogmoor Road is open and its roof/first floor is widely visible in the surrounding area.

5. Condition No 3 removes Schedule 2 Part 1 Class A to E permitted development rights which means that a planning application would be required for any further extensions including alterations to the roof and outbuildings within the curtilage. The appellant quotes national policy to argue that permitted development rights are intended to apply to all dwellinghouses, that they should not be removed without clear justification, that the rights removed were not relevant to the permission granted, that the condition was not necessary to make the proposal acceptable, and that the property is not unusual in any way to justify the restriction. The condition is therefore unreasonable.
6. However, in this case the site is unusually exposed and elevated, and the permitted extensions were substantial in relation to the earlier modest bungalow, particularly at first floor level and when seen from the rear. Whilst the proposal passed the District Local Plan Policy 30 test of not having a materially greater impact in the rural area than the existing building¹, with further extensions, roof alterations or in combination with outbuildings there is the potential it might do, even those within permitted development limits. To safeguard against such a possibility the condition is reasonable in this instance, but it does not prejudice the acceptability of further proposals which would simply require an application to enable their assessment. The rights removed are relevant to the permission since they both affect the amount of building on the site and there is a clear justification given the sensitive location. The condition was thus necessary to make the proposal acceptable in accordance with National Planning Policy Framework paragraph 55. Planning Practice Guidance states that area-wide removal of permitted development rights are unlikely to meet the tests of reasonableness and necessity, but in this case the restriction has been applied to a specific property.
7. The appellant draws attention to appeal cases in Slip End and Crowthorne where inspectors have deleted conditions limiting permitted development rights, on the other hand the Council quote an appeal in Gosmore where such a condition was upheld. This is not surprising as the merits of each case will be individual and site specific, as here.

Conclusion

8. For these reasons Condition No 3 is reasonable and necessary to maintain planning control to safeguard the character and appearance of the area. The appeal should therefore be dismissed.

David Reed

INSPECTOR

¹ The emerging replacement local plan contains a similar policy CGB4.