



Appeal Decision

Site visit made on 21 December 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2022

Appeal Ref: APP/Y3940/W/21/3280036

Land adjacent to Waitrose, Malmesbury by-pass, Malmesbury SN16 9FS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Orysya Lyvchanyn against the decision of Wiltshire Council.
 - The application Ref 20/04863/ful, dated 9 June 2020, was refused by notice dated 3 February 2021.
 - The development proposed is construction of gabion wall and infilling.
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Decision

1. The appeal is dismissed.

Applications for Costs

2. An application for Costs was made by Miss Orysya Lyvchanyn against Wiltshire Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council's refusal notice includes reference to the change of use of the land from agricultural to private amenity/recreation space. This was agreed with appellant's agent during the consideration of the application. Following the submission of the appeal the appellant has confirmed that the land would be used for amenity and recreation purposes, but only insofar as it would relate to a farming enterprise involved in the grazing of animals. I have taken this as clarification that the land would be solely used for agriculture. Accordingly, in the banner heading above, I have used the development description in the application form.
4. The Appellant considers that the proposal would be permitted development and does not require planning permission. It is not my role to determine whether the proposal is permitted development or not. This would be a matter for the appellant to pursue separately through a lawful development certificate procedure.

Main Issue

5. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

6. The appeal site comprises a large sloping field located between an elevated highway and the south-eastern edge of Malmesbury. Mature trees and scrub border the field which slopes in a northerly direction down towards the banks of the River Avon. The site's riparian character, combined with the boundary

- vegetation and the large expanse of undeveloped pasture, has an attractive appearance that forms a natural backdrop at the south-east of the town.
7. The gabion wall would be more than 100m in length and extend in a west-east direction across the centre of the field in an arc formation.
 8. In terms of the wall's height, the appellant indicates that this would be around 1.6m to 1.8m above ground level. The Council's Officer's report refers to a figure of 0.4m, however, it is not clear from where that measurement has been obtained as the submitted drawings have not been annotated with dimensions. Despite these differences between the parties, my own reading of the submitted drawings coupled with my observations on site suggests that the appellant's measurements are the more accurate.
 9. The scale of the wall and its central position cutting across the field would appear as a prominent and substantially engineered structure, from vantage points to the north along Baskerville Hill and the elevated highway to the east. From those locations, the wall's height and upright profile adjacent to the more gradual down slope of the field would have a jarring and abrupt appearance that would draw the eye. In doing so, it would be seen to harmfully erode the field's natural character and appearance and the positive effect it has on the town's setting.
 10. The area to the immediate south of the wall would be backfilled with soil and seeded to create an area of built-up ground with a flat profile. This levelled area would extend back from the wall by around 5m-8m, according to the appellant, and consequently its flat profile would alter the gradual fall of the land towards the riverbank. This would appear unnatural and accentuate the proposal's overly engineered appearance. Together with the wall, it would harm the field's character and the positive influence it has on the landscape and as a backdrop to the town.
 11. It is acknowledged the levelled area would take on a natural appearance once grass has established. Yet its flat's surface would appear discordant and fail to assimilate into the field's natural sloping topography.
 12. The appellant has indicated that local stone would be used for the wall and would not appear unattractive in its context given that walls elsewhere in locality have a similar appearance. Yet, the proposal would be a substantial and prominent retaining structure that would have a dominant appearance in the context of the site and its surroundings. Accordingly, the appellant's argument attracts limited weight.
 13. On the basis of the above, I conclude that the proposal would harm the character and appearance of the area. It therefore fails to accord with Policies CP51 (vi) and CP57(i) of the Wiltshire Core Strategy (January 2015) and Policy 13 of the Malmesbury Neighbourhood Plan (February, 2015), which amongst other things, require proposals to protect, and enhance the visual amenity of the landscape, enhance local distinctiveness and relate positively to landscape setting and local topography. The proposal also fails to align with Paragraph 174(b) of the National Planning Policy Framework in failing to recognise the intrinsic character of the site's setting.

Other Matters

14. The appeal site is located within the town's conservation area (CA). The significance of the CA lies in the quality of its historic buildings, and its unique, elevated location which gives the town an enclosed feel. Although, the appeal site provides an attractive rural backdrop to the town's built edge, it is partly surrounded by more modern development. Moreover, it is not specifically listed, as an important green space from which key views of the CA are derived in the Malmesbury Conservation Area Appraisal. Accordingly, and notwithstanding my concerns in respect of the proposal's visual impacts, the proposal would not harm the significance of the CA.
15. The proposed gabion wall would in the appellant's view be a practical way of separating grazing animals from entering the top half of the field. However, there would likely be alternative, less intrusive ways of sub-dividing the field that would not harm its character in the same way as the proposal would. Therefore, I have given limited weight to that matter.

Conclusion

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

RE Jones

INSPECTOR