



Appeal Decision

Site visit made on 1 February 2022

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal Ref: APP/J1860/W/21/3284164

Westkerke Pensax, Stockton, Worcester WR6 6XJ

- 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 M Shah against the decision of Malvern Hills District Council.
 - The application Ref 21/01265/FUL, dated 1 July 2021, was refused by notice dated 23 September 2021.
 - The application sought planning permission for the erection of a replacement dwelling and detached garage without complying with conditions attached to planning permission Ref 12/01226/FUL, dated 4 September 2012.
 - The conditions in dispute are Nos 5 and 6 which state that:
(5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order revoking or re-enacting that Order with or without modification) no additions, extensions or external alterations shall be made without the submission and subsequent approval of a separate application for planning permission; and,
(6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such (other than those expressly authorised by this permission) shall take place within the site of this dwelling without the submission and subsequent approval of a separate application for planning permission.
 - The reasons given for the conditions are:
(5) To ensure the character and appearance of the building is maintained and to protect the amenities of the area in accordance with Policies DS3 and QL1 of the Malvern Hills District Local Plan; and,
(6) To bring any future development or proposed change within the curtilage of this dwelling under planning control to safeguard the character and appearance of the area in accordance with Policy DS3 of the Malvern Hills District Local Plan and Policy CTC1 of the Worcestershire County Structure Plan.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling and detached garage at Westkerke Pensax, Stockton, Worcester WR6XJ in accordance with Ref 21/01265/FUL without compliance with condition numbers 5 and 6 as previously imposed on planning permission 12/01226/FUL, dated 4 September 2012, but subject to the conditions set out in the schedule below.

Preliminary Matters

2. Since the 2012 permission the Town and Country Planning (General Permitted Development) Order 1995 has been replaced by the Town and Country

Planning (General Permitted Development) (England) Order 2015 (The GPDO). Conditions 5 and 6 include reference to “any Order revoking or re-enacting that Order with or without modification” and I have therefore considered these conditions under the current GPDO.

Main Issue

3. The main issue is the effect varying conditions 5 and 6 would have on the character and appearance of the surrounding area.

Reasons

4. Conditions 5 and 6 are broadly worded and therefore potentially restrict a large number of permitted development rights. The appellant has referred to the conditions restricting development otherwise permitted under Classes A-E, G and H of Part 1, Classes A, C and D of Part 2 and Classes A-I of Part 14 of the GPDO. Although I generally agree with this list, I find that Classes B, C, D and I of Part 14, for various renewable energy developments, would not be covered by either Condition 5 or 6. This is because the associated works would not be attached to the host dwelling and could not be described as a building, enclosure or pool in themselves.
5. The host dwelling is a detached two-storey house with the upper floor partially within the roof. It is set back from, and above, the road by a garden and parking area which contains a large, detached garage. The site is part of a short row of dwellings which run along Pensax and are similarly set back from, and above, the road. These dwellings are varied in style but share some architectural features with the host dwelling, such as front facing gables, dormers and external materials, and are predominantly of a comparable size. Although within a rural area, given the appeal site’s relationship with nearby dwellings, it is within the context of this group that the host dwelling is read.
6. The Council’s case turns on the argument that should the permitted development rights be reinstated this could allow for the significant increase in the scale of the host dwelling resulting in it no longer assimilating with the street scene. With this in mind, as the relevant provisions under Parts 2 and 14 would not affect the size of the host dwelling and are not atypical for residential development, it is not necessary to restrict such development. The same would be true also of Part 1, Classes E, G and H which would also not affect the overall scale of the dwelling.
7. As the host dwelling is a replacement of a previous bungalow on the site, Policy SWDP 18 of the South Worcestershire Development Plan (the DP, February 2016) is relevant. It limits the footprint of a replacement dwelling to being no more than 30% larger than footprint of the original. The associated policy justification states its intention is to ensure that any increase would be proportionate to the replaced dwelling so that it is in keeping with the street scene. The footprint of the replacement dwelling granted under the 2012 permission was 18.9% larger than that of the original dwelling and therefore less than the 30% limit.
8. Whilst the dwelling may have been contrary to the limits set out within the now superseded Policy CN8, I have not been provided with any evidence to demonstrate that the two recent extensions to the dwelling have resulted in a breach of the 30% limit. Given the scale of these extensions, I find this unlikely

and that the dwelling would still comply with Policy SWDP18 which is the current adopted policy. Moreover, as raised above the host dwelling is currently of a comparable size to the neighbouring houses and I do not find it to be out of keeping with the street scene.

9. As the host dwelling already benefits from a side and rear extension the opportunity for any substantial increase to the footprint of the dwelling is significantly reduced. Given this, and the above points, it is very unlikely that reinstating the permitted development rights for extensions could result in a significant or unacceptable increase in the footprint of the building with regards to either the 30% limit or its assimilation with the street scene.
10. Moreover, although the gaps between dwellings are irregular, the gap between the host dwelling and its immediate neighbour on Pensax is much wider than typical. As such, I find that although a side extension may reduce the distance between the host dwelling and the side boundary, this would not unacceptably affect the pattern of development or the street scene.
11. Although Class AA of Part 1 allows for the construction of an additional floor, which would have the potential to substantially increase the scale of the host dwelling, development under this class is controlled by prior approval. As such, if an additional storey were to adversely affect the scale of the building or its appearance in relation to the surrounding area, the Council could refuse prior approval. Furthermore, any smaller extensions or other alterations to the roof would not affect the footprint of the building as controlled by Policy SWDP 18 and are unlikely to substantially increase the height, scale or massing of the building given the form of the roof and the existing dormers.
12. Therefore, I conclude that allowing the permitted development rights under Schedule 2, Parts 1, 2 and 14 of the GPDO would be unlikely to harm the character and appearance of the surrounding area as a result of an increase in the scale of the host dwelling. As such removing conditions 5 and 6 would comply with DP Policies SWDP 18 and SWDP 21 which require, amongst other things, replacement dwellings to be of a suitable scale and to integrate effectively with its surroundings. Whilst Policy SWDP 25 of the DP has also been referred to, no specific harm to the character landscape has been raised and so I find that it is not directly relevant to this appeal. The removal of the conditions would also comply with Paragraph 56 of the National Planning Policy Framework (the Framework) as the above conditions are not necessary.

Other Matters

13. Concerns have been raised regarding harm to the living conditions of neighbouring occupiers should the permitted development rights be reinstated. Whilst I note these, the relationship between the appeal site and the closest neighbouring dwellings is such that any adverse impacts would be unlikely. Moreover, the GPDO sets out controls, such as height limits and obscure glazing requirements, which would further limit the potential for any harm to occur.
14. Although superficially similar, the appeal example raised by the Council (Ref APP/B3410/W/213270974) is in a materially different location, covered by different policies, and has a different context to the scheme before me. As a result of this it is different to the appeal before me and is not directly relevant to this appeal.

Conditions

15. As I have concluded that conditions would not be reasonable or necessary to prevent extensions, alterations or outbuildings in the interests of the character and appearance of the host building and its surroundings, I have removed conditions 5 and 6.
16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions and by restating those conditions that are still subsisting and capable of taking effect.

Samuel Watson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby approved shall be carried out in accordance with Drawing No. WK1 and WK2, unless otherwise required by conditions attached to this permission.
- 2) The tree planting shown on Drawing No. WK2 shall be carried out within the first available planting season following the grant of planning permission. If within a period of five years from the date of the planting of any tree planted pursuant to this condition that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the Local Planning Authority gives its written approval to any variation.
- 3) Within 3 months of the date of this permission the construction of the vehicular access shall be carried out in accordance with the specification for vehicular crossings set out at Appendix A of Worcestershire County Council's Highway Specification.
- 4) Within three months of the date of this permission the driveway/vehicular turning area shall be constructed using 300mm crushed stone, 100mm type 1 aggregate and 40mm Forest of Dean chippings at a gradient not steeper than 1 in 8.
- 5) The garage hereby permitted shall be used solely for the garaging of private vehicles, storage and for other purposes incidental to the enjoyment of the dwellinghouse as such and not as primary habitable accommodation or for the carrying out of any trades or business.