



Appeal Decision

Site visit made on 31 January 2022

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/D0121/W/21/3286066

Ivy Cottage, Summer Lane, Banwell BS24 7TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr N English against the decision of North Somerset Council.
 - The application Ref 21/P/2224/FUL, dated 2 August 2021, was approved on 8 October 2021 and planning permission was granted subject to conditions.
 - The development permitted is the erection of two rear dormers, chimney to side elevation, rear conservatory, front portico and coping to gable ends.
 - The conditions in dispute are Nos 1 and 2 which state that:
 1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), no extensions to the north east (side) or north west (front) elevation of the dwelling shall be carried out without the permission, in writing, of the Local Planning Authority, and
 2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order, with or without modification), no garage, shed or other structure shall be erected to the north, north east or east of the dwelling without the prior written permission of the Local Planning Authority.
 - The reasons given for the conditions are:
 1. The Local Planning Authority wish to retain control over extensions and external alterations in order to maintain the integrity and appearance of this development, highway safety, land safeguarded for a major transport scheme and in accordance with policy CS10, CS12 of the North Somerset Core Strategy, policies DM20, DM32, DM38, DM24 and DM28 of the North Somerset Sites and Policies Plan (Part 1) and the North Somerset Residential Design Guide SPD.
 2. The Local Planning Authority wish to retain control over additional structures in order to maintain the integrity and appearance of this development and in accordance with policy CS12 of the North Somerset Core Strategy and policy DM32 of the North Somerset Sites and Policies Plan (Part 1).
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Decision

1. The appeal is allowed and the planning permission Ref 21/P/2224/FUL for the erection of two rear dormers, chimney to side elevation, rear conservatory, front portico and coping to gable ends at Ivy Cottage, Summer Lane, Banwell BS24 7TH granted on 8 October 2021 by North Somerset Council, is varied by deleting conditions 1 and 2.

Background and Preliminary Matters

2. Planning permission was granted in 2003 for the demolition of the existing cottage and the erection of a five bedroom dwelling¹ (the 2003 permission).

¹ Council reference 03/P/2250/F

The permission was subject to a condition which removed permitted development rights for extensions to the replacement dwelling. A conservatory was subsequently permitted to be constructed to the replacement dwelling in 2004.

3. The information indicates that during construction of the replacement dwelling the works did not comply with the approved plans and the pre-commencement conditions had not been discharged for the 2003 permission. A revised application² was submitted which proposed amendments to the replacement dwelling. It was permitted in October 2006 (the 2006 permission). The description of that proposal described only the additions, such as the erection of two rear dormers and a conservatory. However, it appears that the Council considered that this new approval effectively permitted the dwelling as a whole because of the non-compliance with the plans and conditions attached to the 2003 permission.
4. The 2006 permission was granted subject to a number of conditions. These included Condition 2 which removed permitted development rights for the erection of extensions and external alterations to the dwelling and Condition 3 which removed permitted development rights for the erection of buildings within the curtilage. It was explained, at that time and amongst other reasons, that the conditions were necessary because the replacement dwelling was already approximately 50% larger than the original dwelling and this was considered sufficient having regard to (the then) Policy HOU/14 of the North Somerset Local Plan.
5. More recently, under application 21/P/2224/FUL, it was requested that the two conditions which removed permitted development rights attached to the 2006 permission be deleted and that a new permission be granted for the development. The Council did grant a new planning permission³ but with replacement conditions that still removed some permitted development rights although with some increase in the ability to exercise those rights.
6. In terms of the ability to add extensions to the dwelling itself under permitted development rights that were allowed by the recent permission, the wording removes rights for extensions to the north east (side) or north west (front). Consequently, permitted development rights have been reinstated to the other two elevations. The reason for the condition includes the need to maintain the integrity and appearance of the development, highway safety and land safeguarded for a major transport scheme
7. In relation to the construction of a garage, shed or other structure, permitted development rights have been removed for such additions to the north, north-east and east of the dwelling. Consequently, permitted development rights have been reinstated to the other parts of the land. The reason for this condition includes the need to maintain the integrity and appearance of the development.
8. The appellant has submitted this appeal and makes the case, including that these conditions are not necessary, reasonable or precise, and that permission should be granted without them. Consequently, I have considered this as an

² Council reference 06/P/2061/F

³ As this new permission follows from the 2006 permission, the description of the development now proposed should be consistent with the 2006 approval and therefore I have used this earlier description of the development in the heading for this appeal.

appeal made directly against the conditions imposed on the planning permission, 21/P/2224/FUL. In determining such an appeal, section 79(1) of the Town and Country Planning Act 1990 (as amended), allows an Inspector to allow or dismiss the appeal, or reverse or vary any part of the decision of the Local Planning Authority (whether the appeal relates to that part or not) and may deal with the application as if it had been made to him in the first instance.

Main Issue

9. The main issue is whether the conditions are reasonable, necessary and precise, having regard to the character and appearance of the host property and area, highway safety, land safeguarded for a major transport scheme and the policies of the development plan.

Reasons

10. When the replacement dwelling for Ivy Cottage was permitted the development plan contained Policy HOU/14 of the North Somerset Local Plan which, it appears, included an approach that restricted the size of replacement dwellings. This policy has been superseded and my attention has not been drawn to an equivalent policy in the extant development plan which would be applicable to the present dwelling.
11. Also since the original permission to replace Ivy Cottage, it seems that at least some of an estate of new housing has been built on the broadly northern side of the main road. Furthermore, the Council has explained that on nearby land it has granted outline planning permission in April 2015 for a comprehensive development including up to 1,150 dwellings, a 120 bedroom hotel, 20,000 sqm of B1 business space, a primary school and public open space. This development is proposed on the land very broadly to the south and west of Ivy Cottage. The Masterplan for this development shows open space in the vicinity of Ivy Cottage including to the west and in an area running in a reasonably wide area parallel with the main road.
12. Additionally, Policy DM20 of the North Somerset Council Development Management Policies – Site and Policies Plan Part 1 (July 2016) (the DMP) aims to protect major transport schemes from inappropriate development and these schemes are shown on the Policies Map. The submitted extract from the Policies Map shows a northern section of the garden area of Ivy Cottage which has been identified as part of the land to be used for the Junction 21 capacity improvements and is safeguarded under the Policy.
13. Consequently, even though the site may be outside the settlement boundary, as a result of all these matters, the previously fairly isolated and rural surroundings of Ivy Cottage have changed, and are likely to change further, such that the dwelling could in time, and to a fairly large extent, be generally surrounded by built development and which could also include highway improvements that would use part of the garden area.
14. At the present time, Ivy Cottage is a detached dwelling positioned within a reasonable sized garden area. It is set back from the main road behind a short access road and a grass verge. Most of the garden of Ivy Cottage is bounded by fairly well established and mature hedges such that it is partially screened from public view points. As a consequence, development to the dwelling and

within its curtilage, within the limitations and conditions which would be the subject of permitted development rights for individual properties would, in all likelihood, not be overly prominent or give the impression of a cramped or overdeveloped site. Even if permitted development rights were to be exercised and any further addition was clearly visible, such as with some outbuildings, extensions or rights to extend upwards a building, the resulting development would still be experienced in the context of the existing building and its garden, and to some extent in conjunction with the development on the opposite side of the road, some of which is three storeys in height. Such works are likely to have an acceptable impact on both the host property and area.

15. It is also necessary to consider the relationship of the site, and any development that could take place under permitted development rights, with the intended landscaping associated with the comprehensive development which is likely to take place. If residential permitted development rights were to be exercised at Ivy Cottage, the size of the curtilage, its boundary screening and the grassed verge adjoining the main road would help to maintain the generally verdant street scene on this side of the road. As a consequence, the dwelling and its curtilage would not look out of place within the surrounding landscaped areas proposed by the Masterplan for the adjoining land.
16. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Also, paragraph 54 of the National Planning Policy Framework explains that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. In this case, for the reasons I have explained it would not be reasonable or necessary to restrict permitted development rights in the interests of the character and appearance of the host property and area.
17. In terms of the other justifications for the removal of some permitted development rights which the Council has set out, the exercise of such rights should not affect highway safety given the location of the site back from the road. Nevertheless, I am conscious that part of the garden area is identified as safeguarded land for a major transport scheme. This safeguarded land within the garden is generally away from the dwelling and, in combination with the position and need to maintain the vehicular access to the site, it is very unlikely that any extension to the dwelling would encroach into this safeguarded space.
18. It would, in theory, be more likely that an outbuilding could be proposed for this northern section of the site which includes the majority of the safeguarded land. However, this part of the curtilage would be situated forward of a wall forming the principal elevation of the original dwellinghouse. In these circumstances, an outbuilding would not meet the requirements for permitted development and would require formal consideration by the Council. The Council, therefore, would be able to exercise planning control to protect this part of the safeguarded land if the circumstances were to justify such action.
19. There is a small section of the safeguarded land to the side of the dwelling. However, given its limited size, and the position of the vehicular access that would need to be maintained, there is little likelihood that an outbuilding would be pursued on this safeguarded section of the curtilage.
20. For these reasons, I am not satisfied that it would be necessary or reasonable for a planning condition to remove permitted development rights for the

construction of outbuildings within the land that falls within the safeguarded area within the site.

21. At the appeal stage the Council has suggested two alternative conditions which could be attached to any varied permission. These concern restricting upward extensions and the highway safeguarded land, I have explained above why these conditions would not be reasonable and/or necessary.
22. I have not needed to consider whether the wording of the conditions attached to the recent permission are precise because I conclude that the removal of permitted development rights for the extension to the dwellinghouse itself and for outbuildings would not be reasonable or necessary. This conclusion is in respect of the conditions attached to the planning permission 21/P/2224/FUL and the alternative conditions recommended by the Council at this appeal stage. In coming to these conclusions I have found no material conflict with any policies of the development plan, in particular, Policies CS10 and CS12 of the North Somerset Council Core Strategy, Policies DM20, DM24, DM28, DM32 and DM38 of the DMP and the North Somerset Council Residential Design Guide Supplementary Planning Document.
23. I have taken into account all the correspondence between the Council and the appellant during the processing of the recent application and that the appellant appears to have been willing to consider some variation to the original conditions. However, I have considered the appeal based on its merits following my site visit and have reached my conclusions for the reasons set out.

Conclusion

24. In the light of the above analysis and conclusions, I intend to vary the planning permission, Ref 21/P/2224/FUL, by the deletion of the two listed conditions. No replacement conditions would be reasonable or necessary. The original planning decision for application Ref 21/P/2224/FUL and this decision are to be read together and form the planning permission for the development. In the way described, the appeal succeeds.

David Wyborn

INSPECTOR