



Appeal Decision

Site visit made on 2 February 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/C3240/W/21/3280980

Wayside, Horton Lane, Horton, Telford TF6 6DT

- 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 Damian Whitehead against the decision of Telford and Wrekin Council.
 - The application Ref TWC/2020/0530, dated 22 June 2020, was approved on 21 May 2021 and planning permission was granted subject to conditions.
 - The development permitted is 'Reserved matters application for the erection of 1no. dwelling and a detached garage with access, appearance, landscaping, layout and scale in pursuant to outline permission TWC/2018/0481'.
 - The condition in dispute is No 7 which states that:
Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that order with or without modification), the following development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority: extension to the dwelling; addition or alteration to the roof; any windows or dormer windows.
 - The reason given for the condition is:
To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.
-

Decision

1. The appeal is allowed and the planning permission Ref TWC/2020/0530 for 'Reserved matters application for the erection of 1no. dwelling and a detached garage with access, appearance, landscaping, layout and scale in pursuant to outline permission TWC/2018/0481' at Wayside, Horton Lane, Horton, Telford TF6 6DT, granted on 21 May 2021 by Telford and Wrekin Council, is varied by deleting condition No 7.

Background and Main Issue

2. The original planning permission¹ granted outline permission with all matters reserved for one dwelling and a detached garage. A reserved matters application was subsequently submitted and approved² subject to a number of conditions. Condition No 7 of the reserved matters approval, whilst it is not precisely defined in terms of the specific provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) it refers to, effectively withdraws national permitted development rights for extensions and alterations to the approved dwelling.

¹ Council ref: TWC/2018/0481

² Council ref: TWC/2020/0530 ('the reserved matters approval')

This condition was attached in the interests of the living conditions of future occupiers and the character and appearance of the area.

3. This appeal seeks permission to remove condition No 7 from the reserved matters approval as the appellant deems it to be unreasonable and unnecessary. The main issues are therefore whether condition No 7 is appropriate in that context and in respect of the living conditions of future occupiers, and the character and appearance of the area.

Reasons

4. The National Planning Policy Framework (the Framework) advises that planning conditions should only be imposed where they meet the six tests outlined in paragraph 56. The Framework is also clear that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

Living Conditions

5. Despite a substantial proposal, the approved dwelling would sit comfortably within its large plot in a comparable manner to many other properties set in similar sized plots in the surrounding area. There would be good amounts of space around the dwelling to provide future residents with areas to sit and relax, dry clothes and children to play. There would also be a generous area to park vehicles.
6. It is not clear which permitted development rights the Council intended to withdraw under this condition however, given the references to extensions to the dwelling, addition or alterations to the roof and any windows or dormer windows, it would be reasonable to assume this could primarily encompass development covered by Part 1: Development within the curtilage of a dwellinghouse but could also include Part 2: Minor operations, of the GPDO.
7. Taking into consideration what could be carried out under these permitted development rights and the inherent limitations and conditions within the rights to ensure that any effects are mitigated (such as in respect of size, height and proximity to boundaries), I consider that any extensions or alterations would still provide satisfactory living conditions for future occupiers, given the size of the appeal site and external space that would remain.
8. My attention has not been drawn to any development plan policies in this regard, therefore I have relied on the Framework, which this proposal would accord with in terms of seeking to ensure developments provide a high standard of amenity for future users. Accordingly, condition No 7 is not necessary and does not therefore meet the tests set out in paragraph 56 of the Framework.

Character and Appearance

9. There is an eclectic mix in terms of the design and size of properties in the surrounding area. Established boundary features and mature planting are also somewhat characteristic of the area, which would afford some natural screening of the dwelling and any further alterations undertaken under permitted development rights.

10. Given the character of the area and the inbuilt restrictions in the GPDO, including the scale, mass and materials of any alterations, the removal of condition No 7 on the reserved matters approval would still ensure the development complies with the Framework's objective to create places that are sympathetic to local character and are visually attractive. Condition No 7 is therefore also not considered reasonable or necessary in this regard.

Other Matters

11. Following the submission of this appeal, a variation of conditions application³ was submitted to and approved by the Council. This varied condition No 6 of the reserved matters approval, which listed the approved plans, so as to reflect an amended design for the rear element of the approved dwelling. I note that, in granting the 2021 variation, the Council also determined not to withdraw permitted development rights and thus did not reattach condition No 7 of the reserved matters approval.
12. Whilst I have the power under section 79 of the Town and Country Planning Act 1990 to vary or add conditions to the reserved matters approval, the appellant has not indicated that they wish the amended plans considered under the 2021 variation to be included within my consideration of this appeal. Therefore, I have left condition No 6 of the reserved matters approval intact and unamended⁴. Nevertheless, as the 2021 variation includes the amended plans and the removal of condition No 7, this matter is immaterial to my decision and will not prejudice the appellant.
13. Within their statement of case the appellant has also sought clarification on condition Nos 11 and 12 of the original planning permission. This is not a matter for me within the context of this appeal and is for the main parties to resolve as necessary including any implications of subsequent approvals (whether via this appeal or the 2021 variation).

Conclusion

14. For the reasons given above, I conclude that condition No 7 is not appropriate, nor is it necessary to safeguard the living conditions of future occupiers or the character and appearance of the area. Accordingly, I conclude that condition No 7 should be removed, and have therefore allowed the appeal on that basis.

H Ellison
INSPECTOR

³ Council ref: TWC/2021/1014 ('the 2021 variation')

⁴ Consistent with the approach in the Planning Practice Guidance (Reference ID: 21a-031-20180615)