



Appeal Decision

Site visit made on 4 May 2022

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2022

Appeal Ref: APP/Y3940/W/21/3286190

**Windmill Ridge, Down Barn Road, Winterbourne Gunner, Salisbury,
Wiltshire SP4 6JN**

- 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 Dan Steedman against the decision of Wiltshire Council.
 - The application Ref PL/2021/07511, dated 23 July 2021, was approved on 6 October 2021 and planning permission was granted subject to conditions.
 - The development permitted is variation of condition 15 (removal of permitted development rights) on application 17/06469/FUL (construction of one detached dwelling with disabled annexe, including work space for lifelong living and outside space for supported horticultural activities).
 - The condition in dispute is No 13 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 or amending those Orders with or without modification), no development within Part 1, Classes A, B, C or E; or Part 2, Classes A, B or C shall take place on the dwellinghouse hereby permitted or within its curtilage.*
 - The reason given for the condition is: *In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In the banner heading above I have used the Council's description of development as this more accurately describes the extant permission which this appeal relates to. I have also referred to the condition in dispute being No 13, as the condition number referred to in the application form does not appear on the application Ref PL/2021/07511 (the 2021 permission).

Background and Main Issue

3. The 2021 permission granted approval for the construction of a large, detached dwelling with disabled annex. Condition No 13 restricts the exercise of Part 1, Classes A, B, C or E and Part 2 Classes A, B or C permitted development (PD) rights at the appeal site. Development within those classes allows for specified enlargements to the dwelling house, additions and alterations to the roof, detached curtilage buildings, means of enclosure and access, and exterior painting. The justification given by the Council for this condition is, in part, in the interests of the amenity of the area.
4. The Council's officer's report and statement of case refer to features of the area's amenity, that would include the local landscape character, the setting of an adjacent listed building and neighbouring amenities.

5. The appellant seeks to have this condition removed and so restore the relevant PD rights relating to Parts 1 and 2 of the General Permitted Development Order (GPDO)¹.
6. Taking this background into account, the main issue is whether the inclusion of Condition No 13 is necessary and reasonable, having regard to the amenity of the area.

Reasons

7. The appeal site comprises a detached dwelling set within sizeable lawned grounds, located within a special landscape area and in close proximity to a grade II listed windmill.
8. The site is surrounded in most directions by agricultural fields, while a public allotment area is located to the south. Although there are dwellings nearby, these would be separated from the appeal dwelling by the intervening fields, landscaping, and the allotments. The dwelling and its curtilage occupy a high point in the area, thus making the site prominent within its surroundings. In this context, and given its separation from other dwellings, it appears somewhat solitary within this rural landscape.
9. The grade II listed windmill stands adjacent to the appeal site's northern boundary. The mechanical elements, including its sails, have been removed, nevertheless it retains historical value and interest in the locality, which contribute to its significance. The intervening garden space between the windmill and the appeal dwelling is currently undeveloped and affords the listed asset a degree of breathing space from the more modern dwelling. This generous separation distance allows the windmill to be appreciated from wider perspectives particularly from Down Barn Road. The appeal site, therefore, makes an important contribution to the windmill's setting, from which it derives some of its significance.
10. Development proposals within Special Landscape Areas (SLA) are subject to Policy C6 of the Salisbury District Local Plan (2011). This requires the siting and scale of development to be sympathetic with the landscape, using materials appropriate to the locality. Core Policy 58 of the Wiltshire Core Strategy (2015) requires designated heritage assets and their settings to be conserved, and where possible enhanced in a manner appropriate to their significance. This is consistent with the National Planning Policy Framework (Framework) in relation to design and the protection of heritage assets.
11. The Framework states that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. The Planning Practice Guidance (PPG) advises that conditions restricting the future exercise of PD rights, and blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission, are unlikely to meet the tests of reasonableness and necessity.
12. The appellant's case considers that the condition is not necessary or reasonable, as the appeal site maintains a large separation distance from neighbouring occupiers, while occupying a concealed and well screened location. These factors, according to the appellant, ensure that local amenities would not be affected by any of the possible works that the Council has revoked.

¹ Parts 1 and 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015

13. Extending the dwelling under Part 1, Classes A, B and C PD rights would result in a change to the scale and appearance of the dwelling. New additions and alterations, depending on their position, could also bring the dwelling closer to the listed windmill. Such a possibility could therefore encroach into the windmill's setting and may affect the significance of the heritage asset.
14. Part 1, Class E, relates to the provision of buildings within the curtilage of the house. Although many such 'outbuildings' are modest structures such as greenhouses and sheds, Class E allows for much wider types and sizes of buildings within the curtilage that could introduce further substantial development on the appeal site, particularly given the large size of the site. Although the GPDO provides certain safeguards, it is necessary for development within these Classes within Part 1 to be considered by the Council, given the site's sensitive and prominent position within an SLA and its proximity to the listed windmill.
15. The appellant's case refers to the listed windmill being on private land, partly surrounded by trees, while the appeal site itself is relatively concealed from public vantage points. However, a listed building does not need to be experienced from the public domain for its setting to be altered. In any case, given the windmill's height and position on elevated land, and notwithstanding the submitted pictures, I was able to clearly discern it from Down Barn Road over the low-rise field enclosures, in addition to the undeveloped garden land that contributes to its setting. Therefore, limited weight is given to the appellant's contentions.
16. In the appellants' appeal statement, there is an indication of what works may be capable of bringing forward under Part 1, however, those are illustrative and do not necessarily reflect the entire extent of possible development under those classes.
17. Part 2, Class A works allow for the construction of gates, fences and walls. The appellant intends to erect a more robust boundary following damage to a fence yet would have to apply to the Council for its approval. Whilst that intended enclosure may be acceptable, there is no limit on length or appearance and multiple walls, or fences within and along the site's boundaries could affect its appearance in the landscape and the setting of the listed windmill.
18. In terms of Part 2, Class B, the appellant indicates that there would be no need for him to widen the existing means of access to the site. This may well be the case, yet further widening could alter the appearance of the natural roadside boundary and vegetation around the access to the appeal site. Any alterations would therefore need to be controlled by the Council through the removal of this class, and I consider it to be necessary in the context of the site's location within an SLA.
19. Part 2, Class C permitted development rights would allow the appeal dwelling to be painted. The revocation of those rights would be unreasonable in the appellant's view as the appeal dwelling could be painted in a colour that would be consistent with rural buildings. I do not doubt the appellant's intentions, yet there would be nothing preventing painting the dwelling in a colour that would be unsympathetic in this semi-rural context and within the setting of the listed windmill.
20. It is acknowledged that some works within the Classes restricted by the Council could be acceptable and not affect neighbouring amenity given the separation distance maintained by adjacent dwellings. However, the terms of Condition 13 are worded to cover the area's amenities in general, not just those of surrounding residents. Therefore, it is still necessary, in my view, to control future developments that may impact on the area's visual amenities.

21. The condition does not deny the possibility of any particular proposal in the future, but merely allows for proper consideration of any potential impacts from the developments listed.
22. Therefore, having regard to the relevant tests of Framework paragraph 55 and related PPG I conclude the condition No 13 (that restricts the exercise of PD rights under Parts 1, Classes A, B, C and E and Part 2, Classes A, B and C at the appeal site) is necessary and reasonable to make the development permitted under application PL/2021/07511 acceptable. As such, condition No 13 as currently worded serves a useful planning purpose. I also consider that this condition is relevant to local development plan policies, planning and to the development permitted, enforceable and precise. Accordingly, there is no clear justification for its removal.

Other Matters

23. The appellant refers to the additional expense of submitting applications for future works that would otherwise not require a fee were the condition not imposed. Whilst I appreciate this would add to the cost of a future project, I do not envisage it to be a large proportion of the future costs of those works. Therefore, cost does not justify the removal of the condition.
24. The Appellant indicates that future development at the site would likely be required to support the continuing health and well-being needs of a family member. I have considered the Equality Act 2010 and the Public Sector Equality Duty (PSED) to which I am subject. Section 149 (7) of the Act sets out the relevant protected characteristics which include a person's disability. Since there is the potential for my decision to affect a person with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 (1) of the Act.
25. The negative impact of dismissing the appeal on the appellant arises from the occupiers having to apply for permission for work that would otherwise be PD and the Council potentially refusing those future schemes. However, having due regard to this, in my view the adverse impacts of dismissing the scheme would be proportionate having regard to the legitimate and well-established planning policy aims to protect the amenities of the area. Taken alongside the other considerations forwarded by the appellant, the PSED considerations would not outweigh the harm I have identified.

Conclusion

26. For the reasons given the appeal is dismissed.

RE Jones

INSPECTOR