



Appeal Decision

Site visit made on 5 July 2022

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2022

Appeal Ref: APP/R1010/W/21/3289346

183 Shuttlewood Road, Bolsover, Derbyshire S44 6NX

- 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 James Kay against the decision of Bolsover District Council.
 - The application Ref 21/00253/FUL, dated 27 April 2021, was approved on 18 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is the erection of a two storey dwelling (replacement dwelling).
 - The condition in dispute is No5 which states that: Notwithstanding the provisions of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order) the dwelling must not be extended without the prior grant of planning permission.
 - The reason given for the condition is: To prevent further extensions being undertaken under permitted development rights as the proposed dwelling is considered to be at the limit of what would be considered as not materially larger than the dwelling it is replacing and as such further extension would be contrary to Policy SS9 of the Local Plan for Bolsover District.
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Decision

1. The appeal is allowed and planning permission Ref 21/00253/FUL, granted on 18 June 2021, is varied by deleting Condition 5.

Background and Main Issue

2. The inclined site includes a detached 2-storey dwelling and detached garage set in a large garden plot. The site lies to the rear of a ribbon of residential properties along the eastern side of Shuttlewood Road and is accessed from a narrow track. The surrounding area is an undulating landscape of predominantly open fields. The site lies within an area designated as open countryside.
3. Planning permission Ref 21/00253/FUL was granted on 18 June 2021 for the erection of a two storey dwelling (replacement dwelling) subject to planning conditions. Condition 5 of the permission requires that planning permission would be required for any future extension to the approved dwelling which would normally be granted by virtue of the provisions of Article 3(1) and Part 1 of Schedule 2, of the Town and Country Planning (General Permitted Development) Order 2015 (the GDPO) (or any Order revoking and re-enacting that Order).
4. The appellant has submitted the appeal on the grounds that such a condition is not justified in the particular circumstances of the case. Accordingly, I consider the main issue is whether or not the condition is necessary and reasonable in the interests of protecting the countryside.

Reasons

5. Policy SS9 of the Local Plan for Bolsover District [2020] restricts development in countryside areas. This reflects the approach of the National Planning Policy Framework (the Framework). The aim is to achieve the sustainable distribution of development, to avoid isolated homes in the countryside and protect its intrinsic character and beauty.
6. Although the policy does not explicitly refer to replacement dwellings, there is no dispute between the main parties that the site would constitute previously developed land. Exception a) of Policy SS9 allows for the change of use or the re-use of previously developed land, provided that the proposed use is sustainable and appropriate to the location. It states that 'In all cases, where development is considered acceptable it will be required to respect the form, scale and character of the landscape, through careful location, design and use of materials'.
7. As a proposal for the replacement of an existing dwelling, the Council does not dispute that the development would maintain the sustainability of the site's use, or that it would be inappropriate in its established location. Furthermore, it has determined that, in a location of mixed house types, the design, scale and form of the proposed dwelling would respect the style and character of development in the locality.
8. In carrying out the assessment of the building's scale, the Council have referred to the test of whether the proposed building would be materially larger than the existing building/s. This is a test normally reserved for development in the Green Belt.
9. In the context of national Green Belt policy set out in the Framework, the test is applied only to serve the fundamental aim of preventing urban sprawl and keeping land permanently open. The assessment of openness may consist of both visual and spatial elements; however, it is distinct from an assessment of whether or not a proposal is fitting in terms of its character and appearance in either its immediate or wider setting.
10. The scale of the proposed building is a relevant consideration. Although a measure of the scale of development against that of the existing building may assist in this, as above, it would not necessarily encompass consideration of the wider effects required by the policy. It is not therefore a reliable measure of the effect of a proposed development on the character and appearance of a location.
11. I recognise that the scale of the proposed building was compared to the cumulative size of the existing buildings on the site and the degree to which the dwelling could be theoretically extended under the terms of the GPDO. However, it was nevertheless found to be acceptable having regard to the character of development in the vicinity. Furthermore, in the context of its location close to other houses and residential plots, no harm to the landscape or wider countryside character was envisaged.
12. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (the PPG) states that

restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.

13. Although the proposed house would be larger than the one it would replace and be located behind the main row, as others are, it would not have a high degree of prominence in the landscape. It would be on lower ground compared to the nearest properties south of Featherbed Lane. It would be largely screened by, or seen against, the row of development along Shuttlewood Road. An extension to the dwelling within the restrictions of the GDPO would not change this.
14. Furthermore, the site lies alongside other houses which, in the absence of evidence to indicate otherwise, would likely benefit from the provisions within the GPDO. Any increase in scale arising from extensions to the proposed dwelling under the terms of the GPDO would be commensurate with extensions which could be undertaken at neighbouring sites. They would not therefore appear at odds with similar sized increases in the nearby houses or, in turn, the characteristic form and scale of development in the locality.
15. For those reasons, and in the absence of specific reference to the 'materially larger' test in Policy SS9 as referenced by the Council and stated in its reason for imposing the condition, I find that the necessary justification for the removal of permitted development rights for extensions to the proposed dwelling does not exist. The condition is therefore unreasonable and unnecessary, and it fails the tests as set out in Paragraph 57 of the Framework and the advice in the PPG.

Conclusion

16. For the reasons given, the appeal is allowed.

R Hitchcock

INSPECTOR