



Appeal Decision

Hearing (Virtual) held on 2 August 2022

Site visit made on 3 August 2022

by William Cooper BA (Hons) MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2022

Appeal Ref: APP/J0405/W/21/3282512

1 Rosebery Close, West End, Hoggeston MK18 3RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended ('the Act') against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Martin Baylis against Buckinghamshire Council - Aylesbury Area.
 - The application Ref: 21/02908/APP, is dated 14 July 2021.
 - The development proposed is described as retention of dwelling unrestricted as to occupancy.
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Decision

1. The appeal is allowed insofar as it relates to the garden extension element of the appeal dwelling, and planning permission is granted for change of use of agricultural land to residential garden at 1 Rosebery Close, West End, Hoggeston MK18 3RR in accordance with the terms of the application, 21/02908/APP, dated 14 July 2021, and the plans submitted with it, subject to the following condition:
 - 1) Within three months of the date of the planning permission hereby granted, there shall have been submitted to and approved in writing by the local planning authority a biodiversity enhancement and protection scheme (BEPS) for the property, to demonstrate how the development will achieve the objectives of Vale of Aylesbury Local Plan Policy NE1. The BEPS shall include the date by which any identified further actions are to be undertaken. The scheme shall be implemented as approved.

Preliminary Matters

2. The Council did not issue a decision within the prescribed period or within an agreed extension of time period. The appellant exercised their right to appeal against the failure of the Council as the local planning authority to determine the application.
3. After the planning application was submitted, a new version of the National Planning Policy Framework was published in July 2021, and the new Vale of Aylesbury Local Plan (VALP) was adopted in September 2021. The parties have had opportunity to comment on the engagement of these new policy documents in relation to the appeal, and so will not be disadvantaged by my consideration of them.

4. Retention of the dwelling with unrestricted occupancy would encompass the following elements. First is unrestricted occupancy of the dwelling, free from agricultural tie. Second is first floor living accommodation, including three additional bedrooms and a second bathroom, that it is undisputed has been constructed in the loft space of the dwelling without Council approval. Third, are two dormer windows on the dwelling's rear elevation. Fourth, is an area of garden that has been extended into an area of fields, without Council approval.
5. Firstly, the proposed residential occupancy of the existing enlarged dwelling, without agricultural tie would not amount to a material change of use of land and building, and would not come under the definition of development set out in section 55 of the Act.
6. Also, notwithstanding the 2021 appeal decision on the site¹ to refuse an appeal against agricultural occupancy restriction condition, on 'Finney conflict' grounds, crystallisation of various caselaw² has indicated that once a relevant dwelling has been built, a statement of the purpose of the dwelling is not sufficient to restrict occupancy. As such, the removal of a condition restricting occupancy, where the operative part of the planning permission refers to a specific type of occupation, is unlikely to create a 'Finney' conflict (having regard to *Finney v Welsh Ministers* [2019] EWCA 1868). This points towards a section 73 application against planning condition being a more appropriate mechanism for addressing whether or not to retain the agricultural tie on the appeal dwelling.
7. Secondly, the first floor living accommodation in the loft space is interior in nature, and its construction did not entail raising of the building's roof ridge height.
8. Thirdly, the approved dwelling did not have permitted development rights removed. Also, given the intervening rolling landform, hedgerows and trees in the host landscape, and their matching materials and subordinate proportion, the two dormer windows added to the western roof slope assimilate visually with the dwelling. The property continues to read on the ground as a mainly glimpsed, lower-rise dwelling that is part of a cluster of rural housing at Rosebery Close, set within a rural landscape. Within this context, the local rural landscape character endures, and the building operations do not materially affect the external appearance of the building. As such, I shall consider the appeal on the basis that the first floor living accommodation and two dormers also do not amount to development.
9. Given the above, these first three elements do not fall to be considered as development. Whereas the extended garden area with its change of use, does. Thus, I shall assess the development proposal as comprising change of use of agricultural land to residential garden.

Main Issue

10. In the light of the above, the main issue in this case is the effect of the change of use to residential garden on the character and appearance of the area.

¹ Appeal Ref: APP/J0405/W/20/3264411, regarding agricultural occupancy restriction condition No 3 attached to the 1991 planning permission Ref: T/APP/J0405/A/90/163903/P8.

² In, for example *Wilson v West Sussex CC* [1963] 2 W.L.R. 669, and *East Suffolk CC v Secretary of State for the Environment* [1973] 1 WLUK 162.

Reasons

11. The extended garden area has a domestic character compared to the rural fields that adjoin part of it. However, that said, intervening rural vegetation and rolling landform substantially limit glimpsed views of the extended garden area, from the relatively narrow hedge-lined lane to the south-west. Also, the modest dip in the brow on which the property is located, together with the screening effect of undulating topography and associated hedgelines in the countryside significantly limit views of the garden from the landscape to the north. Moreover, the established mixed native tree planting in the extended garden area, and other garden vegetation nearby help the extended garden area blend into its edge-of-residential-cluster setting. As such, the extended garden area appears unobtrusive, and the local rural landscape identity endures.
12. In conclusion, the change of use to residential garden arising from the extended garden area does not harm the character and appearance of the area. As such, it does not conflict with Policies BE2, NE4, S1 and S3 of the VALP, which together seek to ensure that, among other things, development respects and complements local countryside character.

Conditions

13. I have attached, with minor drafting changes, a condition suggested by the Council regarding biodiversity, to help protect and enhance the biodiversity of the area.

Conclusion

14. The development proposal, which I consider comprises the change of use of agricultural land to residential garden, would adhere to the development plan as a whole and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal succeeds.

William Cooper

INSPECTOR