



Appeal Decision

Site visit made on 12 July 2022

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 September 2022

Appeal Ref: APP/P1805/W/22/3296017

The Barn, Bromsgrove Road, Clent DY9 9QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mrs Donna Westwood (Westmart Properties Limited) against the decision of Bromsgrove District Council.
 - The application Ref 22/00044/S73, dated 7 January 2022, was refused by notice dated 4 March 2022.
 - The application sought planning permission for 'conversion of existing barn to a dwelling with extension and vehicular access' without complying with a condition attached to planning permission Ref 16/0027, dated 30 March 2016.
 - The condition in dispute is No 6 which states that:
Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development included within Schedule 2, Part 1, Classes A to H, Part 2 Classes A and C and Part 14 Class A and B shall be carried out without the prior approval of the local planning authority to an application in that behalf other than that shown on the plans hereby approved.
 - The reason given for the condition is:
To protect the visual amenity of the area in accordance with policy DS13 of the Bromsgrove District Local Plan January 2004.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission Ref 16/0027 (the 'original permission') was granted subject to disputed condition 6 which relates to the removal of a variety of permitted development rights at the property. The appellant considers that the condition is unreasonable and seeks its removal. Notwithstanding the rather general reason given for the condition set out in the decision notice of the original permission, the Council's reason for refusal in the latest decision provides more detail, setting out that the condition is necessary in order to protect the character and appearance of the host building, surrounding area and Holy Cross Conservation Area, and the openness of the Green Belt.
3. Given the above, the main issues are whether or not the condition is reasonable and necessary in order to (i) protect the character and appearance of the host building, (ii) preserve or enhance the character or appearance of the Conservation Area, and (iii) protect the openness of the Green Belt.

Reasons

4. The appeal property is a modest sized detached brick-built dwelling and converted former barn, located on the eastern side of Bromsgrove Road. The barn dates from the 19th century and is thought to have been formerly associated with Oldnall Farm to the south-east, therefore providing an understanding as to how the historic farmstead operated. Due to its historical links and its traditional appearance which contributes positively to the rural character of the area, the barn is identified as a non-designated heritage asset (NDHA). Paragraph 203 of the National Planning Policy Framework (the Framework) requires that when determining applications that affect the significance of a NDHA a balanced judgement is required, having regard to the scale of any harm, and the significance of the asset.
5. The site lies in an area of rural character within the Holy Cross Conservation Area (CA) and the Green Belt. The CA is primarily focused around the crossroads in the centre of the village, with the special interest of the CA being derived principally from its rural village setting which, I understand, is historically linked to Holy Cross having been an important resting place for pilgrims visiting the Clent Hills. The CA includes a collection of listed buildings including Oldmill Farmhouse, located in close proximity to the appeal site, and The Bell & Cross Public House.
6. 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 National Planning Practice Guidance¹ (PPG) adds that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. It also requires the scope of such conditions to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), so that it is clear exactly which rights have been limited or withdrawn.
7. Condition 6 removes all permitted development rights covered under Schedule 2, Part 1 Classes A to H, Part 2 Classes A and C, and Part 14 Classes A and B. These relate to various additions and alterations that are usually permitted to be carried out to the dwelling itself, as well as the erection of outbuildings, hard surfacing, solar panels and gates, fences, and walls within its curtilage.
8. I shall deal first with the issue of whether the condition is reasonable and necessary in order to protect the character and appearance of the host building and CA. As set out above, the building is an NDHA and although a modest rear extension was approved as part of the original planning permission, it has retained its traditional character, appearance and modest proportions. In particular, the limited number of openings in its elevations and roof slope assist in maintaining the buildings historic and rural character.
9. Whilst I acknowledge that the GPDO includes some additional restrictions for dwellings located within a CA, under Part 1 Classes A, C, D, G and H, Part 2 Class C and Part 14 Class A of Schedule 2 there remains a range of additions and alterations that would be capable of being carried out to the appeal dwelling. These include rear extensions, roof alterations, porches, chimneys and flues, solar panels, and exterior painting.

¹ PPG Paragraph: 017 Reference ID: 21a-017-20190723

10. My attention has been drawn to the Council's High Quality Design Supplementary Planning Document (2019) (SPD). Section 5 of the SPD relates specifically to the conversion of rural buildings to residential use and includes a range of guidance which, if followed, should assist in retaining the original, utilitarian character of the converted rural building. Furthermore, Figure 9 of the SPD highlights the impact that unsympathetic additions and alterations can have on the character of a converted rural building. Paragraph 5.20 of the SPD also advises that where consent is given for the conversion of a traditional rural building, it is likely that a condition will be included removing permitted development rights for extension and alterations, to ensure the building remains rural in character.
11. The appeal property sits within a large and wide plot, with much of its curtilage located beyond its south-east gable elevation. Although views are largely screened from Bromsgrove Road by existing planting along the site's frontage, views of the dwelling's curtilage are still possible particularly when travelling north along Bromsgrove Road. In addition, by virtue of the existing post and rail and post and wire fences along the site's southern and eastern boundaries, clear views of the site are available from the public right of way (PROW) which runs eastwards along the southern boundary of the site. The site therefore has a largely open and distinctly rural feel and appearance.
12. In my judgment, reinstating permitted development rights to enable the various additions and alterations as detailed above to be carried out to the dwelling without first receiving approval from the local planning authority, could result in unsympathetic works being carried out which would fail to respect the simple rural character of the building. Whilst any extensions, additions or alterations permitted may not be large or substantial, they would nevertheless be visible in public views and would affect the modest size and/or appearance of the original building. Such development could result in harm being caused to the historic and architectural interest of the NDHA, as well as to the contribution that the building makes to the rural character of the CA.
13. Accordingly, insofar as it relates to the carrying out of additions and alterations to the dwelling itself, including such minor alterations as for example installing a flue and external painting, I consider that condition 6 is reasonable and necessary to protect the character and appearance of the host building and the CA as a whole. The built-in limitations of permitted development rights in the GPDO and the variety of built form in the locality do not lead me to a different conclusion.
14. Condition 6 also removes several permitted development rights which apply to developments within the curtilage of the dwelling. Specifically, these are Part 1 Classes E (outbuildings) and F (hard surfacing), Part 2 Class A (gates, fences, walls or other means of enclosure) and Part 14 Class B (stand-alone solar equipment).
15. The site's location within a CA only affords additional restrictions in respect of development under Part 1 Class E and Part 14 Class B. However, development under these Classes can still be undertaken albeit only to the rear of the dwelling in respect of Part 1 Class E, and to the side or rear in respect of Part 14 Class B. No other additional restrictions apply in respect of Part 1 Class F or Part 2 Class A.

16. Although many of the developments permitted under the GPDO would be restricted in terms of size and location, due to the site's orientation and ground levels, which rise gradually away from Bromsgrove Road, any such developments within the curtilage of the dwelling would nevertheless be largely visible and prominent when travelling north along Bromsgrove Road and when viewed from the PROW.
17. I observed during my site visit that the majority of other residential curtilages in the area are far more secluded and have less of an impact on the character and appearance of the CA. Whilst there are examples of garages, outbuildings and other structures within the street scene they are generally more low-lying and far less exposed than the appeal site.
18. Accordingly, if permitted development rights under Part 1 Classes E and F, Part 2 Class A, and Part 14 Class B were reinstated, it would be possible to carry out works within the curtilage of the dwelling which would have the potential to harm the open and rural character of the site and the contribution it makes to the character and appearance of the CA. The condition is therefore also reasonable and necessary on this basis, and it allows the Council to properly consider any proposals on receipt of an application for planning permission, including whether the proposal would preserve or enhance the character or appearance of the CA.
19. I accept that dwellings in CAs generally have permitted development rights afforded to them and it has been put to me that other nearby dwellings in the Holy Cross CA retain their permitted development rights. However, in this case I consider that the specifics of the site justify the restriction of such rights.
20. The Council contends that the condition is necessary in order to also protect the openness of the Green Belt. The Government attaches great importance to Green Belts. Paragraph 137 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
21. However, the GPDO does not restrict permitted development rights relating to dwellings and their curtilage in the Green Belt. The rights afforded under Schedule 2 Part 1 of the GPDO apply generally to all dwellinghouses, with specific exceptions for some classes. Rights under Part 1 Class B for example do not apply on Article 2(3) land. This is defined in the GPDO as being land within a Conservation Area, an area of outstanding natural beauty, the Broads, a National Park and a World Heritage Site.
22. Given the specific areas of land included under Article 2(3), it can be surmised that the omission of land within the Green Belt was intentional on the Government's part, and as a result land within the Green Belt is regarded as no different in terms of the application of permitted development rights as land outside of it. Furthermore, the fact that the GPDO places no restrictions on dwellings within Green Belts suggests that development carried out under permitted development would not be harmful to its openness.
23. As such, I do not consider that the potential impact on the openness of the Green Belt provides sufficient justification for the condition restricting permitted development rights. This however does not overcome the potential harm that could be caused to the character and appearance of the host building, surrounding area and the CA by the removal of condition 6.

24. For the collective reasons outlined above, I therefore conclude that condition 6 is justified in terms of being both reasonable and necessary in order to afford appropriate control relating to the effects of possible future development on both the character and appearance of the host building and on the CA as a whole. Accordingly the removal of the condition would conflict with Policies BDP1, BDP19 and BDP20 of the Bromsgrove District Plan 2011-2030 (2017) (LP), and guidance contained within the SPD. These policies seek, amongst other matters, to ensure that developments sustain and enhance the significance of both designated and non-designated heritage assets, including requiring that alterations and additions do not have a detrimental impact on the character and appearance of the asset.
25. Policy BDP4 of the LP was also cited in the reason for refusal, which relates to development in the Green Belt. However, as I have found that the removal of condition 6 which not be harmful to the openness of the Green Belt I find no conflict with this policy.
26. My findings above indicate that the appeal proposal would fail to preserve or enhance the character or appearance of the CA. Paragraph 199 of the Framework states that when considering the impact of a proposal on a designated heritage asset, great weight should be given to the asset's conservation. Whilst the harm I have identified would be less than substantial, it nevertheless is of considerable importance and weight. Paragraph 202 of the Framework requires this harm to be weighed against the public benefits of the proposal.
27. The reinstatement of permitted development rights could result in extensions or other small-scale developments being carried out to the property itself or within the wider site. Such works would benefit the local economy through the construction process, however given the small-scale nature of any development this benefit would be extremely modest and time limited. As a result, the public benefits would not be sufficient to outweigh the harm to the CA which, as I have explained, carries considerable importance and weight.
28. In addition, my findings above also indicate that the reinstatement of permitted development could result in developments being carried out which would detract from the character and appearance of the host property as a NDHA. In accordance with paragraph 203 of the Framework I find that, on balance, the proposal would be detrimental to the architectural and historic character of the building and hence its significance.

Other Matters

29. The appellant has referred to appeal decisions in Holmfirth² and Aughton³ which relate to conditions which remove various permitted development rights. Whilst I do not have the full details of those cases in front of me, it is clear that both sites are located within the Green Belt. There is however no evidence to suggest that they are also located within a CA or relate to a NDHA, and therefore there appears to be significant differences between those cases and the appeal proposal. I have therefore dealt with this appeal on its own merits.
30. The appellant contends that if the Council has concerns about the exercising of permitted development rights within the CA, then the Council has the power to

² APP/Z4718/W/21/3268030

³ APP/P2365/W/21/3273049

impose an Article 4 direction. Such a decision is a matter for the Council, however in any case I have identified that the specifics of the appeal site justify the removal of the permitted development rights listed under condition 6.

31. The appellant considers that the removal of the various permitted development rights is unreasonable as it restricts the appellant and any prospective occupiers from making their desired changes to the property. This is said to have been a major factor in the appellant's recent struggles to sell the property, including accepted offers subsequently falling through. However, in general planning is concerned with land use in the public interest. As identified above, the removal of condition 6 could result in works being carried out to the property and on the site which would cause harm to the character and appearance of the dwelling and the CA. It is highly probable that any such development would remain for an extensive period of time and its impact would be long lasting. For these reasons, I therefore find that this would not be sufficient to outweigh my conclusion on the main issue.

Conclusion

32. In view of the above I find that the condition is reasonable and necessary in that it allows the Council to assess whether or not any future additions or alterations to the appeal property and the site would protect the character and appearance of the host building and preserve or enhance the character or appearance of the CA. I therefore dismiss the appeal.

David Jones

INSPECTOR