



Appeal Decision

Site visit made on 23 August 2022

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2022

Appeal Ref: APP/R1845/W/21/3283421

Wyre Mill Cottage, Mill Lane, Wolverley DY11 5TR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 Tim Partridge against Wyre Forest District Council.
 - The application Ref 21/0729/S73, is dated 16 July 2021.
 - The development proposed is replacement of permitted garage with Lifetime Home without complying with conditions attached to planning permission 20/0029/FUL dated 8 September 2020.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of permitted garage with Lifetime Home at Wyre Mill Cottage, Mill Lane, Wolverley DY11 5TR in accordance with the application Ref 21/0729/S73 dated 16 July 2021 without compliance with condition numbers 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11 previously imposed on planning permission Ref 20/0029/FUL dated 8 September 2020 subject to the following conditions:
 - 1) 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 enlargement, improvement or other alteration of the dwellinghouse, construction of additional storeys, or buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, AA and E shall be constructed.
 - 2) The accommodation hereby approved shall at no time be sold off, sub-let or used as a separate unit of accommodation.
 - 3) The use of the building hereby permitted shall only be occupied as a residential dwelling by David and Wendy Parsons. Following cessation of the occupation of the building by David and Wendy Parsons, the use of the building as a dwelling house shall cease with immediate effect and the approved schedule of works shall be implemented within 3 months of the occupation ceasing. The Local Planning Authority shall be given 14 days notice of when the works shall be completed and shall be given opportunity to visit the building and confirm in writing that the works have been carried out to their satisfaction.

Procedural Matters

2. Taking into account the number of conditions in dispute I have listed them in the Schedule at the end of this decision rather than listing them in the banner heading above.
3. The Wyre Forest Core Strategy (2010) and the Site Allocations and Policies Local Plan (2013) referred to by the Council in its decision notice have been superseded by policies in the Wyre Forest District Local Plan (2022) (LP) which has been adopted since the appeal was submitted. I must make a decision based on the development plan at the time of my decision. The aims of both sets of policies referred to are broadly similar and thus neither main party has been prejudiced by this change.

Background and Main Issue

4. In 2020 planning permission was granted for the replacement of a garage with a bungalow subject to a number of conditions. Based on the evidence before me the bungalow has not been constructed in accordance with the approved plans. The appellant is seeking to remove all of the conditions imposed replacing it with a condition reflecting the bungalow as built. The appellant is also seeking to remove occupancy conditions and a condition restricting certain permitted development rights.
5. Taking into consideration the Council's reasons for imposing the conditions the main issue is whether Conditions Nos 1-11 are necessary and reasonable having regard to the location of housing and the character and appearance of the area.

Reasons

6. The appeal site is formed of a detached bungalow positioned close to Wyre Mill Cottage. The bungalow is raised from ground level and benefits from a decked area. The access and parking area is shared with Wyre Mill Cottage but it enjoys its own defined garden area. The river Stour extends along one side of the site.
7. As the development has already commenced the standard time limit condition for implementation (1); the approved plans condition (2) and conditions for the details of the external materials (3), boundary treatments (8) and flood defence barriers (10) are not necessary.
8. The appellant has questioned the imposition of condition 6 relating to the provision of cycle parking. It is likely that if the occupiers owned bicycles, they would most likely be either stored inside the dwelling or within a shed. In this instance the absence of such facilities would not undermine the acceptability of the development. As such, I do not find the condition is necessary.
9. I note that a non-material amendment application has been granted to increase the floor level of the development. As such, condition 9 is not necessary and can be removed. It is apparent from the information before me that condition 11 has been discharged and therefore it is not necessary.
10. Focusing on the main matters in dispute, conditions stating that the development shall not be sold off, sub-let or used as separate accommodation (4) and that it can only be occupied by David and Wendy Parsons (5) have

been imposed. Despite the appellant's contention, the Council's reason for imposing the conditions were imposed to ensure proper control of the development and to prevent fragmentation of the grounds, which they contend would be undesirable. Furthermore, they advise that planning policies do not support the development of new market dwellings in open countryside.

11. The Planning Practice Guidance¹ (PPG) sets out that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission.
12. Based on the information before me it is apparent that the development was presented on the basis of a need for urgent accommodation for the appellant's parents during the Covid-19 pandemic. Irrespective of the time taken to determine the application the appellant agreed to the conditions restricting occupation of the bungalow. In any event the local planning authority can impose conditions as they see fit providing, they meet the relevant tests.
13. The appellant has not presented any evidence to demonstrate that there has been any material change in circumstances since imposition of the occupancy conditions in 2020. I am satisfied that the development was only permitted based on exceptional circumstances and that this directly led to the need for the occupancy conditions. The Council imposed the conditions for legitimate planning reasons.
14. The conditions are precisely worded, relevant to planning and necessary. The use of occupancy conditions for dwellings which are allowed in exceptional circumstances where a dwelling would not normally have been permitted is the control mechanism which flows from the Framework and the PPG. It is evident that the Council imposed the condition to prevent open market housing in the countryside in a location that would not normally be appropriate for new residential development. Removal of the conditions would be in direct conflict with policies that seek to direct new development to more appropriate locations.
15. I am satisfied that these conditions satisfy the policy and statutory tests. Given these facts I see no reason to reach a different conclusion that the dwelling was only acceptable subject to the imposition of the occupancy conditions.
16. Whilst the development is adaptable, if the condition were to be removed, it would still be a component of market housing rather than a form of specialist accommodation. I have not been presented with any compelling evidence that the Council is failing to meet its requirement in the delivery of either market or specialist housing to justify the removal of the conditions.
17. Turning now, to condition 7 which removes permitted development rights for the enlargement, improvement or other alteration of a dwellinghouse, construction of additional storeys, additions to the roof, porches and buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, AA, B, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
18. The extensions that could be undertaken as permitted development under the provision of Class A of GPDO, whilst single storey, could be considerable

¹ Paragraph: 015 Reference ID: 21a-015-20140306

extending the dwelling to the side and rear and would be visible from the public realm. The addition of another storey would profoundly change the appearance of the host property and the character of the area.

19. Given the design of the roof and in particular its low height and shallow pitch the alterations to the roof under Class B of the GPDO would be limited in scale and unlikely to be visible from the public realm. Such small scale alterations would not disrupt the prevailing character and appearance of the area. A porch under Class D would be small scale and unlikely to harm the overall appearance of the building or the area.
20. A building or enclosure incidental to the enjoyment of the dwellinghouse under Class E, could have a considerable effect upon the character and appearance of the area given the space that exists around the building.
21. Orchard Cottage has a low-key appearance similar to a domestic outbuilding and sits discreetly in the area. In the event that it was extended either upwards, to the side or rear and outbuildings constructed it would invariably have a material effect on the character and appearance of the area through additional built form.
22. Conditions restricting future use of permitted development rights need to be precisely defined. Taking into account the surrounding rural context and as the site lies within the West Midlands Green Belt, I find that extensions and alterations would affect the character and appearance of the area and the openness of the Green Belt. As such, I find that a condition restricting permitted development rights in relation to the enlargement, improvement or other alteration of the dwellinghouse, the construction of additional storeys, and buildings or enclosures incidental to the enjoyment of the dwellinghouse falling within Classes A, AA and E is necessary.
23. Whilst I have redrafted the condition imposed by the Council they have defined which permitted development rights they sought to remove and it is evident that this relates to Orchard Cottage as this is the building subject of the application.
24. For the above reasons I conclude that Condition 4 is reasonable and necessary and the appeal does not succeed insofar as it relates to this condition. The appeal is allowed insofar as it relates to Conditions 1, 2, 3, 5, 6, 7 8, 9, 10 and 11 and the planning permission is varied by deleting these conditions.

Other Matters

25. I must make my decision on the development plan policies and national guidance at the time of my decision. Therefore, the contents of Circular 11/95 The Use of Conditions in Planning Permission, which was cancelled upon publication of the PPG, apart from a number of model conditions, is not relevant to the appeal proposals before me.
26. I acknowledge that consistency in the decision making process is important. However, the decisions and actions of the Council and the Parish Council in relation to applications in the area is not a matter for me in this appeal. I have considered the appeal on its own individual merits.
27. The appellant has referred to an appeal decision which he considers is relevant to the proposal before me. However, it is apparent that the merits and

circumstances of that appeal is materially different with unique circumstances and economic and social benefits compared to the scheme before me. In any case, every appeal must be considered on its own merits. It does not lead me to reach a different conclusion on the main issues.

Conditions

28. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As such I have imposed condition 4 which as set out earlier, I consider remains relevant. I have re-drafted condition 5 to reflect that the schedule of works required under condition 11 has been agreed. Finally, in the interests of clarity, I have re-drafted condition 7 relating to the removal of permitted development rights for alterations and enlargement of a dwellinghouse and outbuildings and structures.

Conclusion

29. The planning permission is varied by deleting Conditions 1, 2, 3, 5, 6, 7, 8, 9, 10 and 11. For the reasons set out above Condition 4 is reasonable and necessary.

B Thandi

INSPECTOR

Schedule of disputed conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) The development hereby approved shall be carried out strictly in accordance with the following plans/drawings: Location plan and drawing dated July 2020 entitled '2 bed bungalow' at scale 1:50 stamped "Approved".
- 3) No development shall take place until details of types and colours of all external materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 4) The accommodation hereby approved shall at no time be sold off, sub-let or used as a separate unit of accommodation.
- 5) The use of the building hereby permitted shall only be occupied as a residential dwelling by David and Wendy Parsons. Following cessation of the occupation of the building by David and Wendy Parsons, the use of building as a dwelling house shall cease with immediate effect and the schedule of works as approved under condition 11 shall be fully implemented within 3 months of the occupation ceasing. The Local Planning Authority shall be given 14 days notice of when the works shall be completed and shall be given opportunity to visit the building and confirm in writing that the works have been carried out to their satisfaction.
- 6) The Development hereby approved shall not be occupied into use until sheltered, secure and accessible cycle parking to comply with the Council's adopted Streetscape Design Guide has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 7) 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 as specified in Schedule 2, Part 1 Classes A, AA, B, D & E shall be carried out without planning permission first being obtained from the Local Planning Authority.
- 8) No development shall take place until details of all walls, fences and other means of enclosure between the application site and Wyre Mill Cottage have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be completed prior to the occupation of the building hereby approved on the site. There shall be no variation in the approved walls, fences or other means of enclosure without the prior written approval of the Local Planning Authority.
- 9) The finished floor levels of the building shall be a minimum of 35.77m AOD, there shall be no variation in the approved floor levels without the prior written approval of the Local Planning Authority.

- 10) Prior to the commencement of works on site, drawings to show the details of the Flood defence barriers which will be fitted to all external openings of the building to a minimum of 600mm above finished floor level have been submitted and approved in writing by the Local Planning Authority. There shall be no variation in the approved barriers.
- 11) Prior to the first occupation of the dwelling hereby approved, a full scheme of works shall be submitted to and approved in writing by the LPA to document how the building shall be adapted to be an ancillary building not in use as a unit of residential occupation in accordance with condition 5 once the residential use has ceased.

The reasons given for the conditions are:

- 1) This condition is required to be imposed by Section 91 of the Town and Country Planning Act 1990 (as amended by the Planning and Compulsory Purchase Act 2004).
- 2) In the interests of clarity and in order to define the permission.
- 3) To ensure that the external appearance of the development is satisfactory and that it accords with Policies.
- 4) To ensure proper control of the development and to avoid any future undesirable fragmentation of the curtilage. To ensure that the development accords with Policy SAL.DPL6 of the Adopted Site Allocations and Policies Local Plan.
- 5) To ensure proper control of the development and to avoid any future undesirable fragmentation of the curtilage. To ensure that the development accords with Policy SAL.DPL6 of the Adopted Site Allocations and Policies Local Plan.
- 6) To comply with the Council's parking standards in accordance with Policy CP03 of the Adopted Core Strategy.
- 7) 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. To ensure that the development accords with Policies CP11 of the Adopted Core Strategies and SAL.UP7 of the Adopted Site Allocations and Policies Local Plan.
- 8) To provide adequate privacy and an acceptable external appearance, and to ensure that it accords with Policy SAL.UP9 of the Adopted Wyre Forest District Site Allocations and Policies Local Plan.
- 9) To ensure there are no flooding issues in accordance with Policy CP02 of the Adopted Core Strategy and Policy SAL.CC7 of the Adopted Site Allocations and Policies Local Plan.

- 10) To ensure there are no flooding issues on the site in accordance with Policy CP02 of the Adopted Core Strategy and Policy SAL.CC7 of the Adopted Site Allocations and Policies Local Plan.
- 11) To ensure proper control of the development and to avoid any future undesirable fragmentation of the curtilage. To ensure that the development accords with Policy SAL.DPL6 of the Adopted Site Allocations and Policies Local Plan.