

Appeal Decision

Site visit made on 8 September 2022

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2022.

Appeal Ref: APP/J0405/D/22/3302229

17 Ridgeway Cottages, Swanbourne, Milton Keynes MK17 0SJ

- 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 Mr Ross Blumire against the decision of Buckinghamshire Council - North Area (Aylesbury).
 - The application ref. 22/00572/APP, dated 16 February 2022, was refused by notice dated 20 June 2022.
 - The application sought planning permission for "Erection of detached dwelling" without complying with a condition attached to planning permission ref. 09/02323/APP, dated 18 February 2010.
 - The condition in dispute is no. 10 which states that: "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no enlargement of any dwelling nor the erection of any garage shall be carried out within the curtilage of any dwelling the subject of this permission / no windows / dormer windows / no fences, gates or walls shall be erected within the curtilage of any dwellinghouse forward of any wall of that dwelling which fronts onto a highway / no buildings, structures or means of enclosure shall be erected on the site which is the subject of this permission / no hard surface shall be provided on the land the subject of this permission, other than those expressly authorised by this permission."
 - The reason given for condition 10 is: "In order to safeguard the amenities of the area by enabling the Local Planning Authority to consider whether planning permission should be granted for extensions having regard for the particular layout and design of the development and to comply with policy GP35 of the Aylesbury Vale District Local Plan."
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Decision

1. The appeal is allowed and planning permission is granted for "Erection of detached dwelling" at 17 Ridgeway Cottages, Swanbourne, Milton Keynes MK17 0SJ in accordance with the application ref. 22/00572/APP, dated 16 February 2022, without compliance with the conditions (including condition 10) previously imposed on planning permission ref. 09/02323/APP, dated 18 February 2010.

Background matters and main issue

2. The appeal property is a 2-storey detached house of brick and tile construction. It has been erected pursuant to a planning permission that was granted over 12
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years ago. That original planning permission will continue to exist whatever the outcome of this appeal.

3. This appeal seeks permission for the development without complying with a condition of the 2010 planning permission as set out in the heading above. Section 73 is drafted widely and so, in addition to considering the disputed condition, it does provide the power to attach new conditions, to not attach conditions which were previously imposed or to attach modified versions of them.
4. In the application, the appellant stated that permitted development (PD) rights should be made available to the property. He wishes to add a second-hand conservatory at the rear of the dwelling and install solar panels in the future.
5. I do not think the Council were unreasonable to interpret the phrase "the amenities of the area", as set in the reason for the disputed condition, as meaning the visual and residential amenities of the area. The Council wishes to retain the condition to safeguard those amenities.
6. The main issue is therefore whether the disputed condition is reasonable and necessary, having regard to national and local planning policies and the interests of safeguarding the visual and residential amenities of the area.

Reasons

7. The National Planning Policy Framework (the Framework) states at paragraph 54 that planning conditions should not be used to restrict national PD rights unless there is a clear justification to do so. The appellant has correctly highlighted the Planning Practice Guidance (PPG) which confirms that such conditions may not pass the test of reasonableness or necessity. In particular, the PPG cautions that the blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
8. The Framework and the PPG set a high bar when seeking to justify conditions that restrict PD rights. The condition in dispute was written a long time ago. Still, it is not precisely defined by reference to the relevant provisions in the General Permitted Development Order (GPDO). It essentially seeks the blanket removal of PD rights at the appeal property. It is also of concern that only the matter of extensions is referred to in the reason for the disputed condition, yet the condition itself restricts many other operational developments.
9. Policies BE2 and BE3 of the Vale of Aylesbury Local Plan (VALP), adopted in September 2021, cover the design of new development and the protection of the amenity of residents respectively. There is no indication in those policies or in their explanatory text that their important aims might be achieved by the specific removal of PD rights.
10. The appeal property has been built in accordance with the approved drawing on a corner plot near the junction between Mursley Road (part of the B4032) and Ridgeway Cottages, a short cul-de-sac of semi-detached residential properties at the eastern edge of Swanbourne. The rear garden is mostly given over to a lawn and is enclosed by substantial fences. A public footpath passes to the rear

of the property. The appeal site does not fall within any designated heritage or landscape area and its surroundings are not characterized by the presence of any important buildings or features of obvious scenic, historic or architectural quality. Being on a corner plot actually limits the exercise of PD rights to a certain extent.

11. Given the degree to which the dwelling is set back from Mursley Road and the presence of a mature mixed hedgerow growing outside the fenced roadside boundary there, the house and the rear garden, where PD rights are most likely to be exercised, are not unduly prominent even though this is a corner plot. When viewing from public vantage points, the removal of PD rights would not have such a significant impact as to disrupt the character and appearance of the street scenes or to erode the character, visual amenity and local distinctiveness of the locality more generally.
12. The host dwelling is detached, of conventional design and offers a reasonable gap between it and no. 16. That neighbouring property has a conservatory to the rear which is actually set well in from the common boundary beyond what appears to be a kitchen window. I have taken into account the fact that the appeal dwelling is set back slightly from the front of no. 16 but I find nothing so unusual about the particular layout and design of the development that would make the removal of PD rights necessary to protect the reasonable amenities of the occupiers of no. 16. I note that those neighbours raised no objections. I am conscious of the important conditions and limitations in the GPDO that are attached to development to be carried out under PD rights, including a prior approval and neighbour consultation exercise for larger home extensions.
13. Drawing these threads together, in my view the exercise of the GPDO provisions in relation to this property is unlikely to have such a significant adverse impact upon the visual and residential amenities of the area as to conflict with VALP Policies BE2 and BE3. I find that there is no clear justification to remove these PD rights, so the disputed condition is neither reasonable nor necessary to make the development acceptable.
14. Reading the Delegated Officer Report (DOR) it is clear that the Council is aware of the operation of section 73 and the need to consider whether any previous conditions that are relevant and continue to have effect should be reimposed on any new permission which may be granted. The Council's relevant response in the Questionnaire indicates that no conditions are regarded as necessary. This, as seems very likely, suggests that the other 9 conditions on the original planning permission have either been discharged or served their purpose or are no longer relevant owing to the sheer passage of time and the full completion of the development in good order. I see no reason to disagree with the Council's response and the DOR did not refer to the breach of any of those planning conditions.
15. Notwithstanding the Council's response, I ought to make 2 points of clarification. Condition 9 concerning windows could only hold good during the initial construction and occupation of the house; it does not prevent the operation of the GPDO going forwards as the condition does not contain some explicit restriction. I am reluctant to reimpose condition 5 about the visibility splays, the only condition, apart from the disputed condition, with a clear ongoing requirement, as to do so would almost certainly rely on control over

third party land which would not be reasonable. Moreover, the vehicular access is far enough away from the junction between Mursley Road and Ridgeway Cottages, along a short, narrow and lightly trafficked cul-de-sac where traffic speeds are low, such that concerns about highway safety should not really arise. Planning permission has therefore been granted unconditionally. This should not come as a surprise to the parties.

16. For the reasons given above and having regard to all other matters raised and the absence of objections from Swanbourne Parish Council and local residents, I conclude that this appeal should be allowed and a new planning permission granted without any of the conditions previously imposed.

Andrew Dale

INSPECTOR