



Appeal Decision

Site visit made on 18 October 2022

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2022

Appeal Ref: APP/Z1510/W/22/3290540

Cottonwood Lodge, Widleybrook Lane, Wethersfield CM7 4FD

- 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 J Quaterman against the decision of Braintree District Council.
- The application Ref 21/02818/VAR, dated 8 September 2021, was refused by notice dated 8 November 2021.
- The application sought planning permission for demolition of existing dwelling and construction of replacement dwelling and cartlodge without complying with a condition attached to planning permission Ref 20/00681/FUL, dated 29 September 2020.
- The condition in dispute is No 7 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house, provision of any building within the curtilage of the dwelling-house, or alteration of the dwelling-house, as permitted by Classes A, B and E of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the Local Planning Authority.*
- The reason given for the condition is: *To ensure the development does not prejudice the appearance of the locality and to protect the appearance of the rural area.*

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing dwelling and construction of replacement dwelling and cartlodge at Cottonwood Lodge, Widleybrook Lane, Wethersfield CM7 4FD in accordance with the application Ref 21/02818/VAR dated 8 September 2021, without compliance with condition number 7 as previously imposed on planning permission Ref 20/00681/FUL, dated 29 September 2020 and subject to the schedule of conditions set out at the end of this decision.

Preliminary Matters

2. Since the Council's decision was issued, the Braintree District Local Plan 2013-2033 adopted 25 July 2022 (BLP) has replaced the Braintree District Local Plan Review 2005, the Braintree District Core Strategy 2011 and the Braintree District Publication Draft Local Plan 2017 which were cited in the Council's reason for refusal. Further comments on this have been submitted by both parties and I have had regard to these when reaching my decision.

Background and Main Issues

3. Planning permission for the replacement dwelling included a condition removing permitted development (PD) rights to the new dwelling with respect to the enlargement, improvement or other alteration of a dwelling house (Part 1, Class A); additions etc to the roof of a dwellinghouse (Part 1, Class B) and; buildings etc incidental to the enjoyment of the dwellinghouse (Part 1, Class E). The application the subject of this appeal sought to vary the condition by removing the references to Classes A and B. The Council considers the condition to be necessary to protect the character and appearance of the area and local landscape, and to ensure acceptable living conditions for future occupants of the property. The appellant considers the condition to be unreasonable and unnecessary.
4. The main issues are therefore whether the condition is reasonable and necessary in the interests of the character and appearance of the surrounding countryside, and the living conditions of future occupiers of the appeal property.

Reasons

Character and appearance

5. Paragraph 54 of the National Planning Policy Framework (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
6. The Council's officer report is clear that the replacement dwelling was allowed to improve the appearance of the site despite failing to comply with aspects of the relevant policies at the time, in particular in that it would be larger than the dwelling it was replacing. While the BLP has been adopted since the decision was taken, BLP Policy LPP 37 effectively continues the previous policy approach.
7. The site would be accessed from an unmade track. There are two other dwellings in proximity accessed from this track, both of which are relatively large in size and occupy spacious plots. The proposed dwelling would occupy a similarly spacious plot but is of a more modest scale in comparison. There are further structures adjacent to the site, one of which appeared at the time of my site visit to be a stable.
8. While the permitted dwelling would be visible from the access track, particularly once the new access is installed, this effect could be mitigated by landscaping which is controlled by condition on the permission. This would in turn serve to mitigate the visual impact of any PD side extension. The site is screened in other directions by the neighbouring dwellings and surrounding landscaping, although I acknowledge this screening would be lessened in winter when trees are not in leaf. However the permitted dwelling would be modest in height and varying the condition as sought would not allow development any higher than the existing roof. PD extensions to the property would be viewed in the context of the neighbouring dwellings. While they would increase the size of the permitted dwelling, further extensions within the limits of the PD rights would not make the dwelling materially more intrusive in the surrounding countryside than that which is permitted given the extent of screening.

9. The plot sizes are spacious, and this would remain even if PD rights were used to their fullest extent as the majority of the plot sits to the front of the principal elevation of the permitted dwelling. While separation distances to boundaries could be reduced, any such extension would be limited in height, reducing the visual effect. The existing dwellings and the permitted dwelling occupy different positions within their plots, minimising the effect of any reduction in separation distances on the character of the area.
10. I therefore consider that the references to Classes A and B in the disputed condition are not necessary or reasonable to ensure that the development would continue to have an acceptable impact on the character and appearance of the surrounding Countryside in accordance with BLP Policy LPP 37.

Living conditions

11. The Council's concerns on this point relate to the limited private amenity space that would be available to occupants of the appeal dwelling, and that this area could be lost were an extension to be constructed utilising PD rights. While the dwelling would be sited a short distance from the rear boundary, the plot is otherwise spacious. While the open areas to the front of the property could be viewed from the track that provides the access to the site, there would be options readily available to future occupiers to restrict visibility from this track, and from the adjacent land if necessary, should this not be achieved through the landscaping condition on the permission. This would provide a reasonable standard of privacy to the garden area that would be to the front of the dwelling.
12. I therefore conclude that the removal of permitted development rights, in respect of Classes A and B, is not necessary or reasonable to ensure that the living conditions of prospective occupants are of a high standard as sought by BLP Policy LPP 52.

Conclusion on disputed condition

13. I have concluded that there is not clear justification for the removal of permitted development rights in respect of Classes A and B in the disputed condition, the removal of which would therefore not be necessary or reasonable. Neither party has objected to the removal of permitted development rights in respect of Class E. I am satisfied that the addition of further outbuildings within the curtilage could result in harm to the appearance of the rural area due to the size and extent of outbuildings that could be constructed and therefore will retain this part. I will therefore vary the condition.

Other Matters

14. I consider there is not an inconsistency in assessing the overall plot as being spacious while noting that the ability to extend the permitted dwelling would be restricted by its position in relation to the rear boundary which is less than the overall length of extension which may be possible using PD rights.
15. It is not necessary for a landscape to be designated for it to be valued, however the fact a dwelling is sited in the countryside is not a justification for the removal of national PD rights. No specific landscape harm has been identified which would justify their removal.

16. There is no basis on which to assume that the design of any PD extensions would not achieve a high standard of design and this would not constitute a well justified reason to restrict national PD rights.
17. The Planning Practice Guidance 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 I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
18. The standard time limit condition should not extend the time period within which the development must start as set out in the original permission. I have therefore adjusted condition 1 to reflect the appropriate time limit.

Conclusion

19. I therefore conclude that the appeal should be allowed and grant a new planning permission which varies the disputed condition and restates all the other conditions.

J Downs

INSPECTOR

Schedule of Conditions

Condition 1

The development hereby permitted shall begin not later than 29 September 2023.

Condition 2

The development hereby permitted shall be carried out in accordance with the approved plans: Proposed Elevations and Floor Plans Plan Ref: 2020-342-010 Version: B.

Condition 3

Prior to the occupation of the development hereby approved a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The scheme shall incorporate a detailed specification including plant/tree types and sizes, plant numbers and distances, soil specification, seeding and turfing treatment, colour and type of material for all hard surface areas and method of laying where appropriate.

All areas of hardstanding shall be constructed using porous materials laid on a permeable base unless otherwise agreed in writing by the local planning authority.

All planting, seeding or turfing contained in the approved details of the landscaping scheme shall be carried out in the first planting and seeding seasons after the commencement of the development unless otherwise previously agreed in writing by the local planning authority.

All hard surface areas agreed as part of the scheme shall be carried out before the first occupation of the buildings or upon the completion of the development whichever is the earlier.

Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years from the completion of the development shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives written consent to any variation.

Condition 4

Prior to any above ground level works commencing, details of the means of protecting all of the existing trees, shrubs and hedges to be retained on the site from damage during the carrying out of the development shall be submitted to the Local Planning Authority for approval. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development to the complete satisfaction of the Local Planning Authority.

No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges.

No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the Local Planning Authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.

Condition 5

Prior to occupation of the development, details shall be approved in writing by the Local Planning Authority showing the means to prevent the discharge of surface water from the development onto the highway. The approved scheme shall be carried out in its entirety before the access is first used and shall be retained at all times.

Condition 6

No unbound material shall be used in the surface finish of the driveway within 6 metres of the highway boundary of the site.

Condition 7

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement of the dwelling-house, provision of any building within the curtilage of the dwelling-house, or alteration of the dwelling-house, as permitted by Class E of Part 1 of Schedule 2 of that Order shall be carried out without first obtaining planning permission from the Local Planning Authority.

Condition 8

The garage(s) / car parking space(s) shall be kept available for the parking of motor vehicles at all times. The garage(s) / car parking space(s) shall be used

solely for the benefit of the occupants of the dwelling of which it forms part, and their visitors, and for no other purpose and permanently retained as such thereafter.

Condition 9

Prior to first occupation, details of a scheme for the provision of nest/roost sites for bats and birds shall be submitted to and approved in writing by the Local Planning Authority. Development shall be implemented in accordance with the approved details prior to the first occupation of the dwellinghouses and thereafter so maintained.

Condition 10

Within 28 days after the dwelling hereby permitted is first occupied, the existing dwelling structures shall be entirely demolished and all materials resulting therefrom shall be removed from the site.

[END]