



Appeal Decision

Site visit made on 11 October 2022

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 December 2022

Appeal Ref: APP/G0908/W/22/3299854

Adj. Barn Cottage, Rosley, Wigton CA7 8BT

- 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 Colin Addy against the decision of Allerdale Borough Council.
 - The application Ref VAR/2021/0013, dated 4 October 2021, was refused by notice dated 2 December 2021.
 - The application sought planning permission for change of use from agricultural land to domestic garden without complying with conditions attached to planning permission Ref FUL/2021/0199, dated 8 September 2021.
 - The conditions in dispute are Nos. 3 and 4, which state that:
 - 3) *The hedgerow and planting on the northern boundary of the site shall be retained when the development hereby approved is implemented. The boundary shall not be reduced in any way and shall be retained in perpetuity. Precautions shall be taken to prevent damage to the hedgerow and planting so indicated: any damage caused shall be made good. The boundary shall be retained after implementing the development and shall not be removed without the prior consent of the Local Planning Authority;*
 - 4) *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or in any Statutory Instrument revoking or re-enacting that Order with or without modification) no development falling within Classes E and F of Part 1 and Classes A and B of Part 2 of Schedule 2 of the said Order shall be carried out without the prior written permission of the Local Planning Authority upon an application submitted to it.*
 - The reasons given for the conditions are:
 - 3) *In order to enhance the appearance of the development and minimise the impact of the development in the locality and safeguard amenity;*
 - 4) *The Local Planning Authority wishes to retain control over any proposed alterations/extensions in the interests of the appearance of the site and safeguard the amenities of adjacent properties.*
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Decision

1. The appeal is allowed and planning permission is granted for change of use from agricultural land to domestic garden at Adj. Barn Cottage, Rosley, Wigton CA7 8BT in accordance with the application Ref VAR/2021/0013 dated 4 October 2021 without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref FUL/2021/0199 dated 8 September 2021 and subject to the conditions set out in Schedule 1 of this decision.

Main Issues

2. The main issues are the effect that the variation of condition No. 3 of planning permission FUL/2021/0199 would have on the character and appearance of the surrounding area and that the removal of condition No. 4 of planning

permission FUL/2021/0199 would have on the character and appearance of the surrounding area and the living conditions of residents of surrounding properties.

Reasons

Condition 3

3. The site comprises an area of agricultural land for which permission has been granted for use as a domestic garden in connection with Barn Cottage, on the edge of a cluster of dwellings. To the north, a section of the site is separated from the highway by a hedge. Beyond the ribbon of residential development, the area is notably rural in character, with expansive fields lining both sides of the highway, located behind hedging.
4. Condition No. 3 attached to planning permission FUL/2021/0199 seeks the retention of the northern boundary hedge at the site. The appellant has stated their intention to retain the hedge along the boundary, along with a fence and a gate, but argue that the wording of Condition No. 3 is overly restrictive.
5. While the site forms part of the garden of Barn Cottage, it is set further back from the main cluster of residential built form than the rest of the garden, marking the transition towards the fields beyond. The introduction of residential development or paraphernalia at the site associated with its approved use would serve to dilute the immediate rural nature. While the site is not in a prominent location or highly visible within the wider area, such a visual impact would nevertheless be notable within the immediate surrounds.
6. Accordingly, the hedging lends an important element of screening that would serve to soften the impact of such features and ensure that their presence does not cause undue visual harm within the vicinity by detracting from the rural surrounds. It also contributes significantly to the immediate character by forming part of a longer boundary of hedgerow lining the highway. In this sense it is reasonable and necessary that the hedge is retained at an appropriate height and length.
7. Nevertheless, I find Condition No. 3, while seeking the retention of the hedge, is unreasonable as currently drafted. The statement that the boundary shall not be reduced "in any way" is overly restrictive and goes beyond the aim of the condition to safeguard the character of the area. The general statement that "precautions shall be taken to prevent damage to the hedgerow" is unduly wide ranging such that it would be difficult to enforce. Finally, the statements that the boundary shall be "retained in perpetuity" and that it "shall not be removed without the prior written consent of the Council" are contradictory.
8. I have also had regard to the condition suggested by the appellant, which reflects their intention to retain the hedge alongside a fence and gate. However, the wording provides no certainty that the hedge would be retained and maintained at a level that ensures an appropriate level of screening and that continues to contribute to the character and appearance of the area.
9. Accordingly, I have reverted to the parties with a suggested condition that would require the hedge to be maintained in perpetuity at a certain height and length. While no comments were received by the Council, the appellant is agreeable to the condition and has stated that the hedge should be at least 2 metres in height and 8 metres in length along the boundary. I have no reason

to disagree with the measurements provided by the appellant, which I consider to be adequate to ensure that the character and appearance of the surrounding area would be protected following the implementation of the proposal that is the subject of planning permission FUL/2021/0199.

10. For the reasons given, the variation of condition No. 3 of planning permission FUL/2021/0199 would not result in significant adverse effects on the character and appearance of the area and as such would comply with Policies S2 and S32 of the Allerdale Local Plan (Part 1) July 2014 in this regard. I therefore conclude that the condition should be varied as set out in the formal decision.

Condition No. 4

11. Condition No. 4 attached to planning permission FUL/2021/0199 seeks to restrict certain permitted development rights at the site, making specific reference to those rights which it seeks to restrict. The National Planning Policy Framework states that conditions should not be used to restrict permitted development rights unless there is a clear justification to do so, with Planning Practice Guidance (PPG) making it clear that conditions restricting the future use of permitted development rights will rarely pass the test of necessity, and should only be used in exceptional circumstances.
12. I accept that permitted development rights at the site could give rise to further built form within the rural setting. However, the extent of such development would be limited by the criteria of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). Although this may still allow for some sizeable development, I have not been provided with evidence that these rights are likely to be used to their maximum. In addition, such development would be further constrained by, and situated within, the site itself.
13. Although sizeable, the site is self-contained and, due to the hedging along the boundary, is mostly screened from view of the highway and surrounding fields. Following implementation of planning permission FUL/2021/0199 and the use of the site as a domestic garden with associated paraphernalia, it would clearly read as part of the curtilage to Barn Cottage, belonging to the residential section of the road rather than to the open countryside beyond. Any permitted development would be experienced in this context so as not to appear out of place or to unduly disrupt the agricultural nature of nearby fields.
14. The Council contends that the surrounding landscape is sensitive and I recognise the importance of safeguarding the rural character and appearance of the area. Nevertheless, while the Order makes a specific restriction for development on land such as National Parks and Conservation Areas through their inclusion as Article 2(3) land, other undesignated land in a rural or agricultural area is not included in this definition. The fact that the site is located alongside agricultural land with the potential for further development is also common for many other dwellings and curtilages.
15. I do not therefore consider that the precise position of the appeal site within a rural and agricultural area is in itself an exceptional circumstance in this case. Therefore, in the light of the provisions of the Framework and PPG regarding imposition of conditions restricting the future use of permitted development rights, there are no exceptional circumstances to justify the removal of permitted development rights at the appeal site.

16. The reason for attaching the condition to the planning permission also refers to safeguarding the amenities of adjacent properties. However, this has not been raised by the Council in its reasons for refusing the current application and there is no substantive evidence before me to suggest that the removal of this condition would have a negative effect in this regard.
17. The intervening distance between the site and nearby properties, combined with its positioning to the rear of Barn Cottage, would ensure that any development that could be constructed in this location under permitted development rights would be unlikely to cause any significant adverse effects on the living conditions of surrounding occupiers.
18. For the reasons given, condition No. 4 of planning permission FUL/2021/0199 is neither reasonable nor necessary in the interests of the character and appearance of the area and as such would comply with Policies S2 and S32 of the Allerdale Local Plan (Part 1) July 2014 in this regard. It should therefore be deleted.

Conditions

19. The PPG makes it 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 planning permission FUL/2021/0199, 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.
20. The exception to this is the condition relating to the time limit for the commencement of development, which cannot be extended through an application made under section 73. Accordingly, I shall amend this condition to run from the date of the original permission.

Conclusion

21. For the reasons given above, I conclude that the appeal should be allowed and the planning permission varied as set out in the formal decision.

C Rafferty

INSPECTOR

SCHEDULE 1 – CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from 8 September 2021.
2. The development hereby permitted shall be carried out solely in accordance with the following plans: Supporting Statement Drawing BC201 - Location Plan
3. The existing northern boundary hedging at the site shall be retained in perpetuity at a height of no less than 2 metres and at a length of no less than 8 metres along the northern boundary of the application site.