



Appeal Decision

Site visit made on 4 January 2023

by M. P. Howell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2023

Appeal Ref: APP/W0340/W/22/3305276

10 Midgham Green, Midgham, West Berkshire, Reading RG7 5TT

- 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 and Mrs E Jones against the decision of West Berkshire District Council.
 - The application Ref 22/00903/HOUSE, dated 8 April 2022, was refused by notice dated 7 June 2022.
 - The application sought planning permission for the demolition of existing office and store and replacement with two storey extension and single storey link to original house without complying with a condition attached to planning permission Ref 15/00581/HOUSE dated 11 March 2015.
 - The condition in dispute is No 4 which states: Irrespective of the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any subsequent revision), no additions or extensions to the dwelling shall be built or ancillary buildings or structures erected within the curtilage, unless permission in writing has been granted by the Local Planning Authority on an application made for the purpose.
 - The reasons given for the condition are: To prevent the overdevelopment of the site and to safeguard the amenities of neighbouring properties in accordance with Policy CS14 of the West Berkshire Core Strategy 2006 - 2026.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing office and store and replacement with two storey extension and single storey link to original house, without compliance with condition 4 attached to planning permission Ref 15/00581/HOUSE, dated 11 March 2015 at 10 Midgham Green, Midgham, West Berkshire, Reading RG7 5TT, in accordance with the terms of the application, Ref 22/00903/HOUSE, dated 8 April 2022, and subject to the conditions listed below: -
 - 1) The development hereby approved shall be carried out in accordance with drawing nos. existing site plan, proposed block plan, HSL/1944-12, HSL/1944-13, HSL/1944-14, HSL/1944-15, HSL/1944-11, and HSL/1944-10 received 20th March 2015.
 - 2) The materials to be used in this development shall be as specified on the plans or the application forms. No other materials shall be used unless prior permission in writing has been obtained from the Local Planning Authority in respect of a planning application.

Background and Main Issues

2. Application 15/00581/HOUSE was submitted seeking to demolish an existing office and erect a two storey and single storey extension to the existing dwelling. At the time of my site visit, the extensions approved as part of this permission had been erected on site. In granting planning permission Ref. 15/00581/HOUSE, the Council imposed condition 4, which removed the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any subsequent revision) specifying no additions or extensions to the dwelling shall be built or ancillary buildings or structures erected within the curtilage.
3. The appellant seeks to remove this condition. The Council say that the condition was attached to the permission in 2015 to manage the spread of development and overdevelopment within the curtilage of the site. Without the condition, the proliferation of outbuildings along with the potential loss of trees would have a negative impact on the character and appearance of the area and the setting of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
4. In view of the above, the main issue is whether condition is precise, necessary, and reasonable to protect the character and appearance of the area, including the setting of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).

Reasons

5. The National Planning Policy Framework (the Framework) sets out the tests for planning conditions and, at paragraph 54, states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Planning Practice Guidance (the PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity. However, if a proposed development would only be acceptable if certain permitted development rights are not exercised in the future, it may be necessary and reasonable to impose a condition to withdraw those rights.
6. Although the site subject of the appeal is within the setting of the AONB, and the Framework places importance on it¹, the GPDO does not place any further restriction on extending dwellings or erecting outbuildings in these locations. As such, it is reasonable to conclude that extensions to dwellings and outbuildings within the curtilage are permissible where they accord with the provisions of the GPDO. In view of the this, the site's location in the countryside and within the setting of the AONB should not prevent the application of permitted development rights, unless there is a clear justification.
7. With regard to the planning history, I acknowledge the sizeable increase in floorspace and volume when the dwelling was extended in 2015. However, based on the policy requirements at that time, it was determined that the extensions to the original dwelling would not be marginally greater or more harmful than that of the existing dwelling on the rural character of the area; and the proposed development would not result in an extended dwelling being disproportionate in size to the original. Furthermore, the garden of the property was not extended or altered to incorporate the extensions approved in 2015.
8. In view of the above, there would inevitably be some impact if extensions and outbuildings were constructed under the permitted rights, but this is comparable

¹ Paragraph 176

to the permitted rights afforded to the original dwelling. Furthermore, based on the evidence before me and from what I saw on site, the plot does not appear overdeveloped to such an extent that the extended dwelling would have only been acceptable if permitted development rights were not exercised in the future.

9. The land to the north, beyond the established garden, is part of the AONB. The land in the AONB rises from the garden and comprises undeveloped sloping fields, which contrasts to the existing formal garden space. From what I saw on site, the dwelling and garden are largely concealed from public vantage points, other than directly outside the site to the front. To the west, the hedgerow bordering the road and the changing level of the land means only the roofscapes of the buildings are visible at the junction with Windmill Lane. To the north on Windmill Lane, the topography of the land limits views of the property and its garden from the AONB and vice versa. Even in the winter, the change in levels coupled with the trees and landscaping at the edge of the garden would limit views into and out of the site.
10. Having regard to the existing character and appearance of the formal garden, coupled with the limited wider views into and out of the site from the AONB, the condition is not reasonable or necessary to protect the character and appearance of the area, including the setting of the AONB.
11. The PPG also advises that the scope of conditions which restrict permitted development rights must be precisely defined by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)². It is necessary to refer to the relevant legislative provisions in the condition so as to meet the tests of necessity, reasonableness as well as precision. In this instance, the condition does not precisely define the provisions of the GPDO being removed, thus failing the condition tests of being reasonable and precise set out in paragraph 56 of the Framework.
12. Accordingly, the condition is not precise, necessary or reasonable to the protect the character and appearance of the area, and the setting of the AONB. The approval of the extensions without compliance with condition 4 of the 2015 permission would comply with Policies CS14 and CS19 of the West Berkshire Core Strategy 2012 as well as Policy C1 of the West Berkshire District Council Housing Site Allocations Development Plan 2017. These policies set out that, amongst other things, extensions to dwellings in the countryside are acceptable provided the proposed development is a high quality and sustainable design that conserves or enhances the character and appearance of the area and makes a positive contribution to the quality of life in West Berkshire. The proposed deletion of the condition would also comply with the requirements of paragraph 54 of the Framework on decision making and guidance in the PPG.
13. The Council's officer report indicates that the proposed development would not be in accordance with Policies ADPP1, ADPP2 and ADPP5 of the West Berkshire Core Strategy 2012. However, these are strategic policies that set out the overarching strategy for development within the locality as well as within the AONB. I have no substantive evidence before me to indicate that the removal of the condition would result in the development being contrary to the aims of these policies.

² Paragraph: 017 Reference ID: 21a-017-20190723

Other Matters

14. The Council's reason for the condition also indicates that is necessary to protect neighbouring amenities. However, the officer report is largely concerned with the effect on the character and appearance of the area and the setting of the AONB. I have considered the effect on these matters in the main issue. Having regard to the distance from the nearest neighbouring properties there is limited evidence to suggest that the removal of the condition would harm neighbouring occupants living conditions. The Council has also raised concerns over the possible removal of mature trees on the site to erect outbuildings. However, the condition subject of this appeal does not require the appellant to seek permission from the Council to remove trees.
15. I appreciate that there are dwellings within the locality that have similar conditions restricting permitted rights to extend or erect outbuildings. Although Button Court Farm is within proximity, I have not been provided with the full details that would have been available to the previous decision maker when determining the need for the condition. As such, it is difficult to make a comparison when I am not aware of the full facts of the case and if the same local and national policies were applied. However, each case must be considered on its own merits, and just because a condition is attached a nearby property does not infer it should be included on all.

Conditions and Conclusion

16. I will grant a new planning permission without the disputed condition. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions. As I am aware that the extensions approved in 2015 have been implemented, I have not placed any time period condition but retained the plans and materials conditions.
17. For the reasons given above, I find that the disputed condition is not precise, necessary or reasonable. I conclude that the appeal should be allowed, and the condition removed as set out in the formal decision.

M. P. Howell

INSPECTOR