



Appeal Decision

Site visit made on 7 February 2023

by C Harding BA(Hons) PGDipTRP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/R1010/W/22/3303169

183 Shuttlewood Road, Bolsover, Chesterfield S44 6NX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr James Kay against the decision of Bolsover District Council.
 - The application Ref 21/00704/VAR, dated 09 November 2021, was approved on 14 January 2022 and planning permission was granted subject to conditions.
 - The development permitted is Variation of Condition 2 (approved plans) of Planning Permission 21/00253/FUL.
 - The condition in dispute is No 5 which states that: *"Notwithstanding the provisions of Part 1 of Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order) the dwelling must not be extended without the prior grant of planning permission"*.
 - The reason given for the condition is: *"To prevent further extensions being undertaken under permitted development rights as the proposed dwelling is considered to be at the limit of what would be considered as not materially larger than the dwelling it is replacing and as such further extension would be contrary to Policy SS9 of the Local Plan for Bolsover District"*.
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Decision

1. The appeal is allowed and the planning permission Ref 21/00704/VAR for the Variation of Condition 2 (approved plans) of Planning Permission 21/00253/FUL at 183 Shuttlewood Road, Bolsover, Chesterfield S44 6NX granted on 14 January 2022 by Bolsover District Council, is varied, by deleting Condition No 5.

Background and Main Issue

2. The appeal site comprises a two-storey detached dwelling set within an inclined garden, with associated detached garage and shed, and is in a countryside location. The site is set behind other linear residential development that runs along the eastern side of Shuttlewood Road and is accessed by means of a short track. The surrounding countryside is of a generally open and undulating character.
3. Planning permission Ref 21/00253/FUL was granted on 18 June 2021. Condition 5 of this permission required that planning permission would be required for any future extension to the approved dwelling which would normally be granted under the provisions of Article 3(1) and Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO').

4. Application 21/00704/FUL was submitted to the Council to vary Condition 2 of planning permission Ref 21/00253/FUL in order to amend the position of the proposed dwelling. This application was subsequently approved subject to conditions.
5. Condition 5 of planning permission Ref 21/00704/VAR requires planning permission to be granted for any future extension of the approved dwelling which would normally be granted under the provisions of the GPDO. It reflects Condition 5 as originally attached to planning permission 21/00253/FUL.
6. An appeal¹ was submitted and allowed relating to the removal of Condition 5 from planning permission Ref 21/00253/FUL. Following this decision, the appeal now before me was submitted in order to seek the removal of Condition 5 from planning permission Ref 21/00704/VAR also.
7. In light of the recent planning history, the Council has advised that it is not seeking to defend the current appeal. Nonetheless, the main issue to consider remains whether or not the condition is necessary and reasonable in the interests of protecting the countryside.

Reasons

8. The reason provided for attaching the condition refers to Policy SS9 of the Local Plan for Bolsover District [2020] ('BLP'). This policy seeks to restrict development in countryside areas, and reflects the approach of the National Planning Policy Framework ('the Framework') in this respect.
9. In applying BLP Policy SS9, the Council considered whether the proposed dwelling would be materially larger than the existing buildings on the site. However, this test goes beyond that set out within the policy and instead relates to development in the Green Belt, where considerations are primarily those of maintaining the specific purposes and openness of the Green Belt. BLP Policy SS9 itself states that where development is considered to be acceptable with regards to the appropriateness of its location, that it should respect the form, scale and character of the landscape.
10. Whilst the relative scale of the proposed dwelling when considered against existing structures is a matter that can assist in considering the effect that the proposed development would have upon the countryside, it is not the sole consideration.
11. Furthermore, I have had regard to the findings of the Inspector in the previous appeal², who concluded that the proposed development would not have a high degree of prominence in the landscape and that this would not be changed by the extension of the dwelling within the terms of the GPDO. Additionally, the Inspector stated that any increase in the scale of the development as a result of the exercising of permitted development rights would not appear at odds with the characteristic form and scale of development in the locality. I agree with these conclusions which remain applicable to the proposal before me.
12. Paragraph 54 of the Framework states that unless there is clear justification for doing so, that permitted development rights should not be restricted by the use of planning conditions. Planning Practice Guidance ('the PPG') states that

¹ APP/R1010/W/21/3289346

² APP/R1010/W/21/3289346

restricting the future use of permitted development rights may not be reasonable or necessary.

13. As BLP Policy SS9 makes no reference to a requirement for new development in the countryside to not be materially larger than structures that may be replaced, the removal of permitted development rights for extensions to the proposed dwelling on this basis is not justified. Therefore, the condition is both unreasonable and unnecessary, and accordingly fails the tests as set out in the Framework and advice within PPG.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting Condition 5.

C Harding

INSPECTOR