



Appeal Decision

Site visit made on 4 April 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 May 2023

Appeal Ref: APP/D3505/W/22/3306790

Maycroft, London Road, Copdock, Suffolk IP8 3JF

- 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 Brett against the decision of Babergh District Council.
 - The application Ref DC/22/03155, dated 21 June 2022, was refused by notice dated 16 August 2022.
 - The application sought planning permission for the erection of detached a two-storey dwelling. Conversion of existing dwelling to double garage and ancillary accommodation (demolition of existing garage and commercial workshop) as amplified by land contamination report received 8 February 2011 and bat assessment received 21 March 2011; as revised by drawing nos SK11 Rev B, SK12 Rev A and SK14 Rev A (to show revised siting of new dwelling, revised elevations, removal of existing dwelling and replacement with a single-storey triple garage) without complying with conditions attached to planning permission Ref B/11/00063/FUL/ETR, dated 15 September 2011.
 - The conditions in dispute are numbers 5 and 6 which state:
Condition 5: Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A, B, C, D and F of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order Revoking and re-enacting that Order with or without modification) no enlargement, improvement or other alteration to the dwelling shall be erected or carried out except in accordance with drawings showing the siting and design of such enlargement, improvement or other alteration which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.
Condition 6: Notwithstanding the provisions of Article 3, Schedule 2, Part 1 Classes A and E of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order with or without modification), no provision of buildings, enclosures, swimming or other pool shall be erected except in accordance with drawings showing the design and siting of such building(s) which shall previously have been submitted to and approved, in writing, by the Local Planning Authority.
 - The reason given for both conditions is: *To enable the Local Planning Authority to retain control over the building in the interests of amenity, in accordance with saved policy CN01 of the Babergh Local Plan Alteration No. 2 (2006).*
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Decision

1. The appeal is allowed and planning permission Ref B/11/00063/FUL/ETR for the erection of a detached two-storey dwelling, conversion of existing dwelling to double garage and ancillary accommodation (demolition of existing garage and commercial workshop) as amplified by land contamination report received 8 February 2011 and bat assessment received 21 March 2011; as revised by drawing nos SK11 Rev B, SK12 Rev A and SK14 Rev A (to show revised siting of new dwelling, revised elevations, removal of existing dwelling and

replacement with a single-storey triple garage) at Maycroft, London Road, Copdock, Suffolk IP8 3JF, is varied by deleting conditions 5 and 6 and substituting them with a new condition. The decision is subject to the conditions detailed in the schedule to this decision below.

Procedural Matters

2. The Council in their appeal statement describes condition 5 as removing Classes A to E and H of Part 1, Schedule 2 and Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), and condition 6 as removing Classes A-C of Part 1, Schedule 2 of the GPDO. However, according to the Council's decision notice for application Ref B/11/00063/FUL/ETR, condition 5 removes Classes A, B, C, D and F of Part 1, Schedule 2 of the GPDO and condition 6 removes Classes A and E of Part 1, Schedule 2 of the GPDO. I have therefore considered the appeal on this basis.

Background and Main Issues

3. Planning permission¹ was granted for the construction of a replacement dwelling and a triple garage which included two conditions (conditions 5 and 6) removing permitted development rights for extensions to the appeal dwelling including additions, alterations, alterations to the roof, porches, hard surfaces and outbuildings.
4. The reason for both conditions refers to Policy CN01 of the Babergh Local Plan Alteration No. 2, adopted 2006 (LP). However, the Council's decision notice² refused the development against Policy CN01 of the LP, Policies CS1 and CS15 of the Babergh Core Strategy, adopted 2014³ (CS) and paragraphs 130, 132 and 134 of the National Planning Policy Framework ('the Framework'). I have therefore considered the appeal against the policies referred to in the reasons for refusal.
5. The Council consider the conditions to be necessary to ensure the appearance of the building is not harmful to the character and appearance of the surrounding area, the living conditions of the occupiers of neighbouring properties and the occupiers of the host dwelling. The appellant, however, objects to the conditions as they consider them to be unnecessary and unreasonable, contrary to the tests for conditions set out at paragraph 56 of the Framework.
6. Taking the above background into consideration, the main issues are whether the conditions are reasonable or necessary in the interests of the character and appearance of the surrounding area; the living conditions of the occupiers of neighbouring properties, with particular reference to privacy; and the living conditions of the occupiers of the host dwelling, with particular reference to the size of private amenity space.

¹ B/11/00063/FUL/ETR

² DC/22/03155

³ Babergh Local Plan 2011-2031 Core Strategy & Policies (Part 1 of New Babergh Local Plan), February 2014

Reasons

Character and Appearance

7. The appeal site comprises an irregular shaped, substantial plot in which a detached 1.5 storey dwelling and detached garage has been recently constructed. The dwelling is positioned towards the rear of the plot, with the detached garage positioned in front of the dwelling. The dwelling has a large front garden extending towards London Road that is visible from the street and a smaller private rear garden. An access road serving buildings to the rear of the appeal site extends from London Road along the side of the plot. The dwelling forms part of a ribbon of development along the western side of London Road that consists of detached dwellings, 1 to 1.5-storeys in height set within substantial plots and are predominantly positioned closer to London Road than the host dwelling.
8. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
9. From the information before me and from my observations during my site visit, the principal elevation of the dwelling directly faces towards London Road. Therefore, no outbuildings could be constructed forward of the existing dwelling under Class E, Part 1, Schedule 2 of the GPDO. The significant size of the front garden could allow a sizeable Class E outbuilding to be erected to the side or rear of the dwelling and still comply with E.1(b) of the GPDO, that requires no more than 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse) to be covered by buildings, enclosures and containers. Furthermore, the dwelling could be extended to the side and rear. However, such outbuildings and extensions would be sited a substantial distance from London Road and therefore would not be highly visible from the public realm. While the size of the host dwelling could be extended to the side and rear, the overall size of the appeal site would ensure that it would not result in an overdevelopment of the plot.
10. Planning permission B/11/00063/FUL/ETR was determined by the Council on 15 September 2011. Class AA, Part 20, Schedule 2 of the GPDO came into force after the proposal was approved. Although Class AA is not expressly mentioned within conditions 5 or 6 of the decision notice, condition 5 restricts the "enlargement, improvement or other alteration to the dwelling" and includes the proviso, "any Order revoking and re-enacting that Order with or without modification". Therefore, in my opinion, permitted development rights falling within Class AA of the GPDO have also been removed from the appeal site.
11. I acknowledge that the ribbon of development along the western side of London Road is characterised by dwellings that are low in height and that Class AA, Part 20, Schedule 2 of the GPDO could allow the construction of additional storeys to the dwelling. However, the appellant would have to apply to the Council for prior approval for the criteria listed at AA.2(1), which includes: (e)(i) the external appearance of the building, including the design and architectural features of (aa) the principal elevation; and (bb) any side elevation that fronts a highway. Consequently, should the Council have any

concerns regarding the upward extension of the existing dwelling, this could be assessed via the prior approval application.

12. Class C allows alterations to the roof of a dwelling. Class D allows the construction of a porch outside of an external door. Both are limited in scale by the GPDO and therefore they would unlikely adversely affect the character or appearance of the surrounding area if they were undertaken as permitted development.
13. I therefore conclude that a condition removing Classes A - E of Part 1, Schedule 2 of the GPDO is not reasonable or necessary in the interests of protecting the character and appearance of the surrounding area. The development without conditions removing these classes of the GPDO would therefore comply with Policy CN01 of the LP and Policies CS1 and CS15 of the CS which, amongst other things, seek to ensure that developments are of an appropriate scale, form, detailed design and construction materials for the location. It would also comply with paragraphs 130, 132 and 134 of the Framework that, amongst other things, seek to create places that are sympathetic to local character.

Living Conditions of the Occupiers of Neighbouring Properties

14. Side extensions to dwellings are, amongst other things, restricted in height to single storey under Class A, Part 1 Schedule 2 of the GPDO. Therefore, the outlook from any potential ground floor windows would be restricted. Upper floor windows within the side elevation of a dwelling are restricted to be obscure glazed and non-opening under Class A, Part 1, Schedule 2 of the GPDO unless the opening parts of the window are more than 1.7m above the floor of the room in which the window is installed. Therefore, the outlook from a first floor side window would also be restricted.
15. Class AA, Part 20, Schedule 2 of the GPDO could allow the construction of additional storeys to the dwelling. However, the appellant would have to apply to the Council for prior approval for the criteria listed at AA.2(1), which includes: (g) impact on the amenity of the existing building and neighbouring premises including overlooking, privacy and the loss of light. Therefore, should the Council have any concerns regarding the upward extension of the existing dwelling on the living conditions of the occupiers of neighbouring properties, this could be assessed via the prior approval application.
16. Class B, Part 1, Schedule 2 of the GPDO allows additions to the roof of the dwelling. However, additions could not be made to the front roof slope of the dwelling, and any windows within a roof slope forming a side elevation would be restricted to be obscure glazed and non-opening, unless the opening parts of the window are more than 1.7m above the floor of the room in which the window is installed. I note that the rear elevation of the dwelling is already served by two dormer windows and first floor windows and therefore the outlook from any additional dormer windows on this roof slope would have a similar impact in terms of privacy. Furthermore, the siting of the dwelling towards the rear of the plot restricts views towards the neighbouring properties and their gardens.
17. Therefore, conditions removing Classes A and B of Part 1, Schedule 2 and Class AA of Part 20, Schedule 2 of the GPDO are not reasonable or necessary in the interests of protecting the living conditions of the occupants of neighbouring

properties, with particular reference to privacy. The development without conditions removing these classes of the GPDO would therefore comply with paragraph 130 of the Framework that, amongst other things, seeks to create places with a high standard of amenity for existing users.

Living Conditions of the Occupiers of the Host Dwelling

18. The significant size of the front garden could allow a sizeable Class E outbuilding to be erected to the side or rear of the dwelling and still comply with E.1(b) of the GPDO, that requires no more than 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse) to be covered by buildings, enclosures and containers. Therefore, there is the potential that the appeal site could result in a substandard level of private amenity space for the occupants of the host dwelling.
19. Therefore, a condition removing Class E, Part 1, Schedule 2 of the GPDO is reasonable and necessary in the interests of protecting the living conditions of the occupants of the host dwelling, with particular reference to the size of private amenity space. It would thus conflict with paragraph 130 of the Framework that, amongst other things, seeks to create places that have a high standard of amenity for future users.

Other Matters

20. From the evidence before me, the Council do not raise an objection to the deletion of Class F, Part 1, Schedule 2 of the GPDO from condition 5 of planning permission B/11/00063/FUL/ETR. Therefore, I will not consider this matter further.

Conditions

21. The guidance in the PPG makes clear that decision notices for the grant of planning permission under section 73 should also reinstate the conditions imposed on earlier permissions that continue to have effect.
22. The Council has requested that all conditions from the original planning permission are reinstated. However, the dwelling was constructed at the time of my site visit and subsequently the Council has provided me with copies of two decision notices relating to the discharge of conditions 3, 4, 8, 9 and 11 of the original permission.
23. Consequently, it is not necessary to reinstate the standard time limited condition 1, condition 3 regarding external lighting details to be submitted and approved by the local planning authority, or condition 9 regarding landscaping details to be submitted and approved by the local planning authority. I shall vary conditions 2, 4, 8 and 11 to reference the details already approved by the local planning authority and the requirement for the approved details to be retained. I will vary condition 7 to only reference 'commercial workshop 6' as it is unclear from the information before me whether this building has been demolished and to vary the trigger for the work to be undertaken. Furthermore, I will re-attach condition 10 as from the information before me, it is unclear whether this condition has been complied with.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed insofar as Classes A, B, C, D and F of Part 1, Schedule 2 and Class AA of Part 20, Schedule 2 of the GPDO. However, the appeal should be dismissed insofar as Class E of Part 1, Schedule 2 of the GPDO.
25. Therefore, I vary the planning permission by deleting the disputed conditions 5 and 6 and substituting them with another condition. I have included all the remaining relevant conditions in full from the original permission, with the exception of conditions 1, 2, 3, 4, 7, 8, 9 and 11, for the reasons detailed above.

A Berry

INSPECTOR

Schedule of Conditions

1. The area within the site shown on drawing no. SK11 Rev B for the purposes of loading, unloading, manoeuvring and parking of vehicles shall be retained and used for no other purposes.
2. The approved external facing and roofing materials, as detailed in the local planning authority's decision notice dated 16 April 2012, shall be retained for the lifetime of the development.
3. Notwithstanding the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that order with or without modification), no provision of buildings, enclosures, swimming or other pool shall be erected.
4. Within 2 months of the date of this decision, the building identified as 'Commercial Workshop 6' on drawing no. SK 11 Rev B shall be demolished in its entirety and all materials resulting from the demolition shall be removed from the site to the satisfaction of the local planning authority.
5. The approved screen walls and fences as detailed within drawing no. 4359/SK20 and discharged by the local planning authority's decision notice dated 16 April 2012, shall be retained in the approved form.
6. All planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October – March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the local planning authority. Any trees or shrubs which, within a period of five years of being planted die, are removed, damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority agrees in writing to a variation of the previously approved details.
7. The approved scheme for the provision of permanent bat roosts as detailed within Mill House Ecology – Outline Ecological Mitigation for Bats and discharged by the local planning authority on 16 April 2012 shall be implemented within 2 months of the date on this decision and thereafter maintained.

*****End of Conditions*****