



Appeal Decision

Site visit made on 9 May 2023

by **J Hills MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/X1118/W/22/3308930

Lovacott Grove, road from Horwood Cross to Newton Cross, Lovacott, Devon EX31 3SY

- 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 Philip Coles against the decision of North Devon District Council.
 - The application Ref 75635, dated 18 July 2022, was refused by notice dated 21 September 2022.
 - The application sought planning permission for erection of 2 dwellings & associated landscaping without complying with a condition attached to planning permission Ref 73466, dated 03/09/2021.
 - The condition in dispute is No. 11 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class(es) AA, A - H of Part 1 and/or class(es) A and B of Part 2 of Schedule Two of the Order.*
 - The reason given for the condition is: *To allow the Local Planning Authority to consider the impact of future development on the appearance and character of the development in the area/neighbouring amenity/highway safety in accordance with the requirements of Policies DM04/DM01/DM05 of the North Devon and Torridge Local Plan.*
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Decision

1. The appeal is allowed and planning permission is granted for erection of 2 dwellings & associated landscaping at Lovacott Grove, road from Horwood Cross to Newton Cross, Lovacott, Devon EX31 3SY in accordance with the application Ref 75635 without compliance with condition number 11 previously imposed on planning permission Ref 73466, dated 03/09/2021, but subject the conditions set out in the attached schedule.

Background and Preliminary Matters

2. Planning permission was granted for two dwellings including a condition removing Permitted Development (PD) rights¹ for extensions including upwards extensions, roof alterations, chimneys, satellite antenna, curtilage development including means of enclosure and the formation of access to a highway. At the time of my visit, both dwellings were in the latter stages of construction.
3. The Council refused the application that is the subject of this appeal due to concerns about the impact of the dwellings on the character and appearance of the area, neighbouring amenity and highways safety. The appellant contends

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)

that development that could come forward using the PD rights would not be harmful to the character and appearance of the area, neighbouring amenity or highways safety.

4. I note that the Council no longer considers that the removal of Part 1 Class H PD rights relating to the installation of satellite antenna is reasonable.
5. Paragraph 54 of the National Planning Policy Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) says that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and goes on to add that the blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

Main Issues

6. Having regard to the background, the main issues are whether the condition is reasonable and necessary in the interests of (i) the character and appearance of the area; (ii) living conditions of neighbours with particular regard to privacy, odour and light spill; and (iii) highways safety.

Reasons

Character and appearance

7. The appeal site contains generously sized plots with bungalows that are well-spaced from one another and from neighbouring properties. The appeal site is on an exposed raised ridge on the edge of a rural settlement where views of the bungalow roofs can be appreciated from a number of vantage points. There is a mix of house types and design in the area, including two storey properties, those with chimneys, porches, and their own gated entrances. Although not located in the open countryside, the ridge heights of the appeal site properties are nevertheless similar to those of lower level nearby two storey properties due to the change in topography, and consequently do not currently appear to be discordant features in the wider landscape.
8. Despite Class AA requiring a "prior approval" application to the Local Planning Authority, the PD right normally provides for an additional storey, subject, amongst other things, to the design and external appearance of the building being acceptable. As such, it is feasible that a well-designed extension using suitable materials could meet this condition and as a result, the additional storey could meet the requirements of Class AA. However, given the particularly sensitive nature of the landscape and height of the buildings on the ridge, additional height would be prominent and potentially obtrusive. In this context I find it both reasonable and necessary to restrict Part 1 Class AA PD rights.
9. The appeal site plots are generous in size and well-screened at ground floor level from neighbouring properties, the nearby road and wider countryside views to the south, due to the intervening landform and vegetation. Although Part 1 Class A may allow for an increased scale and mass, the PD right would effectively ensure materials used in exterior works are of a similar appearance to the original buildings, and therefore sympathetic. There would be sufficient

space between the bungalows and land to the east to allow for PD extensions to be constructed without harmfully affecting the appearance of the screened site.

10. Alterations to the roof permitted through Part 1 Classes B and C would predominantly affect the rear elevations of the bungalows. Given these elevations face out towards the open countryside and extensions could not exceed the highest part of the roofs, I find that such small-scale domestic enlargements or alterations to the roof compliant with the requirements of the GPDO could remain sympathetic and would consequently be unlikely to generate additional material harm to the character and appearance of the area. Also, in respect of Part 1 Classes G and H, the addition of chimneys or microwave antenna would not be uncharacteristic of the area, and therefore I find it unreasonable to restrict such PD rights.
11. Although both bungalows have small porches as part of the original design, any additional small porch extension compliant with the requirements of the GPDO would not protrude beyond the footprint of either property to an extent where their scale or mass could appear unsympathetic to the buildings or the rural street scene, as the Council put it. I therefore find it to be unreasonable to restrict Part 1 Class D.
12. Opportunities for additional outbuildings to the west of plot 2 would be limited due to the red line of the proposal site being approximately 4m from the side elevation of the bungalow, thus maintaining a gap between Lower Lovacott and properties to the west. Furthermore, the gardens are well-screened and not excessive in scale and therefore, even if larger outbuildings or containers were to be constructed near properties to the east, I do not find it reasonable to restrict Part 1 Class E. Similarly, options for additional hard surfacing would be primarily restricted to rear or side amenity spaces which are well-screened. Given the development is for 2 properties, I find it unlikely that multiple gates or access points would ensue or that development under Part 1 Class F or Part 2 Class A would be unsightly.
13. I therefore conclude on this main issue that upwards extensions granted through Part 1 Class AA would harmfully affect the character and appearance of the area. The removal of those provisions would conflict with Policy DM04 of the North Devon and Torridge Local Plan 2011-2031 (LP) which amongst other things seek to ensure proposals are sympathetic in scale, massing and their relationship to buildings and landscape features. However, in respect of this main issue, I find that the exercising of the remaining PD rights would comply with Policy DM04 of the LP.

Living conditions

14. The nearest properties to the east and north of the appeal site are some distance away and any extensions or alteration to roofs including existing loft spaces would be unlikely to generate unacceptable harm in respect of overlooking or a loss of privacy. Furthermore, and in respect of Part 1 Classes B and C, side elevation windows would need to be obscure glazed. Therefore, I do not find it reasonable to restrict these PD rights.
15. Although properties to the east of the appeal site have windows and amenity areas facing plot 1, there is an access road, proposed intervening field access track and planting, and thus and very limited space to site development

permitted under Part 1 Class E. Even if a new access were to be introduced here, I find it unlikely that neighbouring privacy or amenities through light spill would be harmful to the living conditions of the occupants of the adjacent properties. Additionally, I have no evidence to the contrary.

16. There are measures in place to ensure the appropriate installation of chimneys or flues and in the absence of any substantive evidence to demonstrate harm in this regard, I find it unreasonable to restrict Part 1 Class G on this basis.
17. I therefore conclude on this main issue that the condition, save for my conclusions on upwards extensions, is not reasonable or necessary in the interests of living conditions of neighbours with particular regard to privacy, odour and light spill. The development without the condition would not be likely to harm the amenities of any neighbouring occupiers. As such, there would be compliance with Policy DM01 of the LP.

Highways

18. The site has its own access arrangements which I observed to be fully functional and adequate for the scale of development. Access to the site is from a narrow country lane where there are a number of other entrance points serving properties in the area. I observed there to be light traffic and low vehicle speeds. I acknowledge the representations raising the issue of a lack of street lights, a near miss and the fact that children walk to the school and bus stop. Although my observations only represent a snapshot in time, and recognising there may be busier times such as the school drop off and particularly during the construction phase, I nevertheless find it unlikely that additional access points or gates would generate unacceptable additional traffic, highways conflict, or that a multiplicity of access points to the site would result. Furthermore, I note that the Council's highways officer has not objected on highway safety grounds.
19. Despite representations showing water running along the adjoining road, even if additional hard surfacing were to be introduced, I find that opportunities for these areas to reach the highway and subsequently cause unacceptable surface water runoff would be unlikely. Also, I have not been provided with any evidence to demonstrate otherwise. Therefore, it would be unreasonable to restrict Part 1 Class F PD rights.
20. I therefore conclude on this main issue that the condition is not reasonable or necessary in order to protect highway safety. The development without the imposition of the condition would be unlikely to harmfully affect accessibility for all highway users. Accordingly, there would be compliance with Policy DM05 of the LP.

Other Matters

21. The appellant refers to appeals at Berries Road, Danzey Green Lane and St Vincents Lane, though these relate to the Green Belt and consequently, the circumstances surrounding their outcomes are materially different to this proposal. Furthermore, I am not aware of the site-specific circumstances relating to a recent planning permission at this site and in any case, I have assessed the proposal on its merits.
22. I acknowledge representations made in respect of enforcement complaints, the height of the land around the bungalow, the effect of affordability on the local

community primary school, though I can only deal with matters based on the planning merits of the development.

Conditions

23. By allowing this appeal a new planning permission is created. The National PPG advises that, for clarity, decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect, unless they have already been discharged.
24. As the development has already started it is unnecessary for me to attach the commencement of development condition. I have imposed the plans condition in the interests of clarity. As the development is not complete it is necessary to ensure compliance with external materials. As there is a condition that ensures permeable surface materials, I have not imposed the surface water condition in the interests of avoiding repetition. Also, there is no mechanism for ensuring its implementation.
25. Landscaping conditions are necessary in the interests of character and appearance. Biodiversity and restricted lighting conditions are required to ensure protection and enhancement measures are provided and retained. The site access and visibility condition is necessary to provide adequate visibility from and of emerging vehicles.
26. It is necessary to remove PD rights for upwards extensions in the interests of the character and appearance of the area. For the above reasons, I have not included PD restrictions for other small-scale domestic alterations. Given my findings in respect of living conditions, it is not necessary for me to remove PD rights for additional openings on the east elevation of plot 1. The control of construction operation hours is necessary to protect the amenity of local residents and a contamination condition is required in the interests of human health.
27. I have made some amendments and omissions to the Council's original conditions in the interests of clarity and to ensure compliance with the Framework.

Conclusion

28. For the reasons given I conclude the appeal should be allowed for the grant of a new planning permission with varied conditions as set out in the formal decision.

J Hills

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans/details:
777 02 A Location Plan received on the 14/05/21
777 20 G Site Plan received on the 30/07/21
777 21 A Contextual Site Sections received on the 30/07/21
777 30 Plot 1 Plans and Elevations received on the 14/05/21
777 31 A Plot 1 Plans and Elevations received on the 30/07/21
777 32 A Plot 2 Plans and Elevations received on the 30/07/21
777 73 Boundary Treatment 03 received on the 14/05/21
777 74 Boundary Treatment 04 received on the 14/05/21
777 72 Boundary Treatment 02 received on the 14/05/21
777 71 Boundary Treatment 01 received on the 14/05/21
RE Lovacott LEMP - 73466 received on the 29/06/21
(‘the approved plans’).
- 2) The proposed development shall be constructed in accordance with the following schedule of materials:
Walls - render and brickwork
Roof - Natural Slate
Hard surfaces - Permeable surface materials
- 3) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation or the substantial completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variations.
- 4) In this condition ‘retained trees, hedges and shrubs’ means an existing tree, hedge or shrub, which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.
 - (a) No retained tree, hedge or shrub shall be cut down, uprooted or destroyed, nor shall any tree, be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard 3998: 2010 Tree Work - Recommendations.
 - (b) If any retained tree, hedge or shrub is removed, uprooted or destroyed or dies, another tree, hedge or shrub shall be planted at the same place and that tree shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.
 - (c) The erection of protective barriers and any other measures identified as necessary for the protection of any retained tree, hedge or shrub shall be undertaken in accordance with the approved plans and particulars before

any equipment, machinery or materials are brought on to the site for the purposes of the development, or in accordance with an approved method statement and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

- 5) Prior to the development hereby approved being brought into use, the biodiversity net gains as indicated on the approved plans, and in the approved LEMP shall be provided in full and retained thereafter.
- 6) No additional external lighting shall be included on any dwelling hereby approved without permission of the Local Planning Authority.
- 7) The site access and visibility splays shall be constructed, laid out and maintained for that purpose where the visibility splays provide intervisibility between any points on the X and Y axes at a height of 0.600 metres above the adjacent carriageway/drive level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.4 metres and the visibility distances along the nearer edge of the carriageway of the public highway shall be 43 metres in each direction insofar as the application site is affected.
- 8) Should any unexpected contamination of soil or groundwater be discovered during development of the site, the Local Planning Authority should be contacted immediately. Site activities within that sub-phase or part thereof, should be temporarily suspended until such time as a procedure for addressing any such unexpected contamination, within that sub-phase or part thereof, is agreed upon with the Local Planning Authority or other regulating bodies.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any order revoking and re-enacting that Order) express planning permission shall be obtained for any development within class AA of Part 1 of Schedule Two of the Order.
- 10) During the construction phase no machinery shall be operated, no process shall be carried out and no deliveries taken at or dispatched from the site outside the following times:
 - a) Monday - Friday 08.00-18.00
 - b) Saturday 08.00-13.00
 - c) nor at any time on Sunday, Bank or Public holidays.