



Appeal Decision

Site visit made on 22 August 2023

by Robert Naylor BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2023

Appeal Ref: APP/H2265/W/22/3307313

The Nursery, Taylors Lane, Trottiscliffe, West Malling, Kent ME19 5ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr A Knapp against the decision of Tonbridge and Malling Borough Council.
- The application Ref TM/22/01502/FL, dated 7 July 2022, was refused by notice dated 2 September 2022.
- The application sought planning permission for a *variation of condition 4 (plans) submitted pursuant to planning permission TM/18/00357/OA (Outline Application: Erection of a detached dwelling for an agricultural worker relating to the nursery business to replace the mobile home, with landscaping reserved)* without complying with condition 4 attached to planning permission Ref TM/20/01140/FL dated 29 July.
- The condition in dispute is No 4 which states that:
(4) *Development shall be carried out in accordance with the following approved plans, drawing references 1129/1 rec 03.06.2020, 1129/2 rec 03.06.2020, 1129/3 rec 03.06.2020, 1129/7A rec 15.07.2020 and email rec 20.07.2020.*
- The reason given for the condition is:
(4) *To ensure that the development is carried out in accordance with the plans hereby approved.*

Decision

1. The appeal is allowed and planning permission is granted for variation of condition 4 (plans) submitted pursuant to planning permission TM/18/00357/OA (Outline Application: Erection of a detached dwelling for an agricultural worker relating to the nursery business to replace the mobile home, with landscaping reserved) at The Nursery, Taylors Lane, Trottiscliffe, West Malling, Kent ME19 5ES in accordance with the terms of the application, Ref TM/22/01502/FL, dated 7 July 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The address in the banner heading above and paragraph 1 of my decision has been taken from the application form, albeit that the reference to Kent has been made after West Malling rather than preceding as shown on the application form.
3. Outline planning permission reference TM/18/00357/OA was granted at appeal¹ for the replacement of a mobile home and the erection of a detached dwelling for an agricultural worker relating to the nursery business, with landscaping as a reserved matter. The reserved matter in respect to landscaping was subsequently approved by the Council under reference TM/20/01276/RM. A

¹ PINS Ref: APP/H2265/W/19/3229912

subsequent planning application has since been determined, for details pursuant to conditions 7 (materials), 9 (parking areas), and 10 (ground floor level)² imposed on planning permission TM/18/00357/OA.

4. A separate planning permission³ was granted in 2020, to vary condition 4 which sought changes to the approved scheme. These predominantly related to the fenestration, with the proportions of the approved dwelling remaining relatively unchanged from that allowed at appeal. During my site observations, it was apparent that works have commenced at the site, and it is therefore reasonable to consider that the appellant chose to implement the TM/20/01140/FL development.
5. The permission which this application seeks to vary was subject to a number of conditions. Condition 4 specified the approved plans. The appellant wishes to vary this condition and replace it with a condition specifying plans that reflect an amended design which incorporates 4 dormer roof extensions with 2 Juliet balconies and 2 windows to the rear elevation, along with alterations to increase the ridge height of the roof. The Council refused this application due to its visual and spatial effects on the open and spacious character of the surrounding area including the Kent Downs Area of Outstanding Natural Beauty (AONB).

Main Issue

6. The main issue is the effect of the proposed development on the character and appearance of the landscape in the Kent Downs AONB.

Reasons

7. The site lies within the Kent Downs AONB, to which the National Planning Policy Framework (the Framework) requires that great weight should be given to conserving and enhancing its landscape and scenic beauty, which has the highest status of protection in relation to these issues.
8. Policy SQ1 of the Tonbridge and Malling Borough Council Development Plan Document (DPD), adopted April 2010 and Policy CP24 of the Tonbridge and Malling Borough Council Core Strategy (CS), adopted September 2007 are broadly consistent with this approach in seeking high quality development which protects, conserves and where possible enhances the character and local distinctiveness of an area.
9. Whilst the appeal site falls within the AONB, it is located within an existing ribbon of residential development and other adjoining buildings associated with The Nursery. Public views of the proposal from Taylors Lane would be limited by the extensive vegetation around the site and by the existing buildings which would provide an effective screen of the proposal. It is acknowledged that the proposal would provide additional height and mass at the roof level, when compared to the previous approved scheme, however these increases are relatively modest, and given that the proposal is viewed in the context of the existing residential properties, there would be no harm to the visual qualities and essential characteristics of the AONB in terms of its landscape and scenic beauty.

² Tonbridge and Malling Borough Council Planning Ref: TM/20/01277/RD

³ Tonbridge and Malling Borough Council Planning Ref: TM/20/01140/FL

10. However, the proposal would also be visible from the more open area to the west of the site. The ridge would be higher than the approved scheme and this section of the dwelling, and together with the dormers would be more visible from public and private areas to the west of Trottiscliffe. However, given the backdrop of the existing buildings, the proposal would be of an acceptable design and proportion, and would not be overly conspicuous or appear out of place, given its rural surroundings and scattering of other buildings. Consequently, the scheme would conserve the landscape and scenic beauty of this section of the AONB.
11. Any effects of the development would be seen within a much wider view, and within the context of the existing ribbon of development, to which the appeal site forms part. Thus, the proposal would at the very least conserve the landscape and natural scenic beauty; visual qualities and essential characteristics of the Kent Downs AONB. Consequently, the scheme is in accordance with DPD Policy SQ1, CS Policy CP24 and paragraph 176 of the Framework which collectively seek high quality development to protect and enhance valued landscapes.

Other Matters

12. I am mindful that the principle of a dwelling for an agricultural worker has previously been found acceptable having regard to Green Belt policy. The proposed amendments do not materially change the use, number of bedrooms, footprint or character of the dwelling and therefore the proposal would still be acceptable in this regard.

Conditions

13. This appeal grants a new planning permission. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73A should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has started, it is not necessary to impose a condition requiring commencement within a set period.
14. It is necessary to specify the amended list of approved drawings as this provides certainty and defines the permission. I have imposed a condition limiting the occupancy of the dwelling to ensure that the justification for workers employed by the business to live on site, remains as the very special circumstance necessary to justify the harm to the Green Belt by reason of its inappropriateness.
15. I have imposed a condition in respect to materials used on external surfaces to be in accordance with the details previously approved, alongside a condition securing the approved landscaping details, in the interests of ensuring a suitable external appearance and recognising its sensitive location.
16. In the interests of the proper functioning of the proposed development and reducing parking on the narrow highway I have attached a condition requiring details of parking to be undertaken in accordance with the previously approved scheme.
17. Since details pertaining to existing and proposed ground levels have been approved, I have attached a condition to ensure that the finished floor levels are retained as approved, to ensure the eventual height of the building is not excessive in the interests of its effect on the Green Belt and AONB. I have also

attached a condition requesting foul water to be disposed of directly into the main sewer to ensure that water quality is protected.

18. No lighting is proposed with the appeal scheme but given the sensitivity of its location and the proximity of other residential uses, details of any proposed should be first agreed with the Council. I have also removed rights for works permitted to take place without the need for express planning permission on a selective basis, referring to classes of the GPDO⁴ concerned with the addition of built volume in the interests of reducing the future effect of the scheme on the Green Belt and AONB.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed. I will grant a new planning permission with the original Condition 4 substituted, and now becoming Condition 1. I will reimpose the undisputed conditions, where they remain reasonable and necessary.

Robert Naylor

INSPECTOR

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 22029AK-PP-S-(13) 03, 22029AK-PP-S-(13) 01, 22029AK-PP-(03) 01, 22029AK-PP-F-(04), and 01 22029AK-PP-(13) 02.
- 2) The occupation of the dwelling hereby permitted shall be limited to a person solely or mainly working, or last working, in the associated nursery business or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 3) The materials used in the external surfaces of the dwelling hereby permitted shall be constructed in the materials approved under application TM/20/01277/RD.
- 4) The landscaping scheme shall be carried out in accordance with the details approved under application 20/01276/RM and within the first planting season following completion of the development.
- 5) Prior to the first occupation of the dwelling hereby permitted, the areas for the parking of vehicles shall be laid out, surfaced and drained in accordance with the details approved under application TM/20/01277/RD. They shall then be retained for use only as vehicle parking for the life of the development hereby permitted.
- 6) The development shall then be carried out in accordance with the details of the proposed finished floor levels in relation to the existing and proposed finished external ground levels approved under application TM/20/01277/RD.
- 7) Any foul water discharge from the dwelling hereby permitted shall be disposed into the mains sewer.
- 8) Details of any external lighting proposed shall be first submitted to and approved in writing by the Local Planning Authority prior to it being installed. Development shall then be carried out in accordance with the approved details.
- 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 with or without modification), no development shall take place under Classes A, AA, B, D or E of Schedule 2, Part 1 unless expressly authorised by this planning permission.

END OF SCHEDULE