



Appeal Decision

Site visit made on 31 October 2023

by C Rose BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/Y3940/W/23/3322227

Yew Tree House, Brokerswood, Wiltshire BA13 4EG

- 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 Mrs Rachel Clow against the decision of Wiltshire Council.
 - The application Ref PL/2023/01435, dated 21 February 2023, was refused by notice dated 19 April 2023.
 - The application sought planning permission for Change of Use of Public House to residential dwellinghouse; first floor extensions at rear and side without complying with a condition attached to planning permission Ref 15/10329/FUL, dated 10 December 2015.
 - The condition in dispute is No 5 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A-E shall take place on the dwellinghouse hereby permitted or within its curtilage.*
 - The reason given for the condition is: *In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.*
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Decision

1. The appeal is allowed and planning permission is granted for Change of Use of Public House to residential dwellinghouse; first floor extensions at rear and side at Yew Tree House, Brokerswood, Wiltshire BA13 4EG in accordance with the application Ref PL/2023/01435 dated 21 February 2023, without compliance with condition numbers 1, 2, 4 and 6 previously imposed on planning permission 15/10329/FUL dated 10 December 2015 and subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission was originally granted in December 2015 for the change of use of a public house to a residential dwelling with first floor side and rear extensions (Ref: 15/10329/FUL). This included a condition (5) removing permitted development (PD) rights for Schedule 2, Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification) (GPDO). These Classes relate to dwellinghouses and their enlargement, improvement or other alteration, additions to the roof, alterations to the roof, porches and buildings incidental to the enjoyment of a dwellinghouse. The reason for the condition relates to the protection of the character and appearance of the area and to enable the Local Planning

Authority to consider individually whether planning permission should be granted.

3. Following this, a further application the subject of this appeal (Ref: PL/2023/01435) was submitted to remove condition number 5 and reinstate the PD rights under Schedule 2, Part 1 Classes A-E of the GPDO. This was refused by the Council on the 19 April 2023. The reason for refusal states 'Condition 5 of 15/10329/FUL is retained as its removal would conflict with Core Policies CP51 and CP57 of the Wiltshire Core Strategy'.
4. The main issue is therefore the effect that removing the disputed condition would have on the character and appearance of the area.

Reasons

5. The appeal site comprises a dwellinghouse and its associated garden that adjoins the garden to the adjoining cottages and a field. The appeal site also comprises a sizable area of land broadly to the north of the dwelling fronting the road and adjoining a garden to a neighbouring dwelling and agricultural field. At the time of my site visit, this area was screened from the road by hedge planting and fencing and an existing garage/outbuilding. In addition, the appeal site comprises a further open area of land on the opposite side of the road adjoining agricultural fields and enclosed by a post and rail fence.
6. The area around the appeal site comprises a sporadic layout of mainly detached dwellings adjoining, and separated by, agricultural fields giving the area a semi-rural character.
7. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should only be imposed when they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. More specifically, 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.
8. The Planning Practice Guidance (PPG)¹ advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It states that the scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the GPDO, so that it is clear exactly which rights have been limited or withdrawn. This paragraph goes on to advise that area-wide or 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.
9. The Council's position is clear in that it seeks to control any future effects on the character and appearance of the area. It is concerned that given the nature of the appeal site comprising a detached house on a large plot with a long road frontage, it would be feasible to undertake a significant amount of development without the need for planning permission, with the potential to harm the countryside setting.

¹ Planning Practice Guidance ID: Paragraph 017 Reference 21a-017-20190723

10. Given that the dwelling is located on a road characterised by a varying design of sizable dwellings, the Council has not provided a clear justification for the removal of PD rights for Part 1 Classes A-D. Moreover, the restrictions contained within Classes A-D put a limit on the size and height of extensions that may be permitted with extensions under Class A conditioned to ensure materials used are of a similar appearance to the existing dwellinghouse. Even if those additions were made to the appeal dwelling, they would not result in extensions of such a size that would project excessively beyond the built form of the existing dwelling to an extent that would harm the wider character and appearance of the area.
11. Turning to the removal of PD rights for Part 1 Class E, and although I acknowledge that buildings built under this PD right have limitations placed on them restricting their size and extent, it would nonetheless allow for the provision of a sizable building on the appeal site. This is by virtue of the size of the appeal site and the ground covered by such buildings under Class E being able to cover up to 50% of the total area of the curtilage. As stated above, the GPDO states that the blanket removal of freedoms for small scale alterations are unlikely to meet the tests. However, in this instance a building of a considerable scale could be constructed, and the condition does not represent a blanket wide removal of freedoms.
12. I appreciate that the appeal property is not a listed building and that the appeal site is not within a conservation area. Its location within the countryside also does not, in itself, represent clear justification to warrant removal of permitted development rights. Nonetheless, the part of the appeal site broadly to the north of the dwelling is readily apparent from the road and open fields beyond. Although this space is currently partly screened by an existing outbuilding and fencing, by reason of the frontage hedge and open nature of the site above the fencing and hedge, it provides a visual gap between the appeal property and Green Pastures. This gap aids and contributes towards the semi-rural character and appearance of the area.
13. Although the existing outbuilding, fencing and hedge would filter views of any building on this land, there is no guarantee of their future presence and as a result they would not constitute permanent screening. Moreover, buildings under Class E can be constructed up to 4 metres in height with no condition requiring the use of matching materials. Consequently, significant and unsympathetic development would be possible on this piece of land that would diminish the open gap between the appeal building and Green Pastures.
14. In my judgement, removing the disputed condition and PD right restriction in relation to Class E would therefore have the potential to result in a building of a significant scale that would be highly visible and detract from the character and appearance of the area. Furthermore, the disputed condition precisely defines the relevant provisions of the GPDO and it is clear which rights have been withdrawn given the specific reference to Class E buildings.
15. The removal of the PD right for such buildings would also not preclude the appellant from applying for planning permission for them, in the future, which the Council would need to consider on its own merits. I note that this may involve additional time, expense and inconvenience. However, I find that the imposition of the disputed condition in relation to Class E is clearly justified by

the potential impact of any future permitted development on the character and appearance of the area in addition to the development already permitted.

16. Based on the evidence before me, having regard to the tests set out in paragraph 56 of the Framework, condition 5 is therefore reasonable in relation to Class E only and necessary in the interests of protecting the character and appearance of the area. As such, the development without the disputed condition would have the potential to conflict with Core Policies 51 and 57 of the Wiltshire Core Strategy (January 2015). Amongst other things, these state that development should protect, conserve and where possible enhance landscape character and not have a harmful impact upon landscape character and ensure that development creates a strong sense of place through drawing on the local context and being complementary to the locality.

Other Matters

17. I note the presence of other large dwellings in sizable plots that may retain their PD rights, but the size of the plot and presence of other dwellings with PD rights are not determinative in themselves and do not justify the potential harm identified above. Moreover, I am required to consider the appeal on its merits.
18. Although the officer's report for the original planning permission for the dwelling identified improvements in the neighbour's living conditions, this does not justify potential harm from further development.
19. As the potential harm identified relates to the circumstances of the appeal site rather than the sensitivity of the wider landscape as a whole, it is appropriate to use a condition to remove PD rights rather than relying upon an Article 4 direction covering a wider area.
20. The appellant has drawn my attention to other previous appeal decisions relating to the removal of permitted development rights in the countryside. Whilst I have had regard to these decisions in reaching my findings, the appeal in Trowbridge² did not relate to Class E PD rights and each application and appeal must be determined on its own merits. Furthermore, the different conclusions reached by the Inspectors in respect of whether there was clear justification for removing permitted development rights in these appeals involved the exercising of planning judgement, which is what I have done in this case.

Conditions

21. The PPG makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I have had regard to the conditions suggested by the Council.
22. As the development has already commenced, there is no need for the standard time condition.
23. As the development has been implemented, there is no need for a plans condition or for conditions seeking the submission of details of bat roosting

² APP/Y3940/W/21/3268583

features prior to first occupation or ensuring that the external surfaces of the development be as proposed.

24. Although access, turning and parking areas have been provided on site, a condition requiring the retention of suitable access, turning and parking areas is necessary in the interests of highway safety. As I have no detailed information before me regarding the discharge or subsequent variation of the original condition number 3, I am reimposing the original condition. In the event that the condition has been discharged or subsequently varied, that is a matter which can be addressed by the parties.
25. In light of my findings above, I have re-worded condition 5 to relate to the removal of PD rights for Class E development only in the interests of protecting the character and appearance of the area.

Conclusion

26. For the reasons given above I conclude that the appeal should succeed in relation to the removal of reference to the restriction of PD rights under Classes A-D. However, the removal of PD rights in relation to Class E are justified and therefore remain. As a result, I grant a new planning permission with the wording of the disputed condition amended and restating the condition relating to the provision of an access, turning area and parking spaces.

C Rose

INSPECTOR

SCHEDULE OF CONDITIONS

1. No part of the development hereby permitted shall be occupied until an access, turning area and parking spaces have been completed in accordance with a plan to be submitted for Approval in writing by the Local Planning Authority. The areas shall be maintained for those purposes at all times thereafter.
2. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Class E shall take place within the curtilage of the dwellinghouse.

*****END OF SCHEDULE*****