



Appeal Decision

Site visit made on 21 November 2023

by Samuel Watson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2024.

Appeal Ref: APP/A0665/W/23/3323317

Millwood House, Stretton Mill Lane, Carden, Cheshire West and Chester, Chester SY14 7HS

- 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 Simon Chantler against the decision of Cheshire West and Chester Council.
 - The application Ref 22/01305/FUL, dated 4 April 2022, was approved on 12 May 2023 and planning permission was granted subject to conditions.
 - The development permitted is the demolition of current buildings to create dwellinghouse and detached garage.
 - The condition in dispute is No 4 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 with or without modification), other than as hereby approved no building, enclosure or structure shall be erected within the site curtilage, nor enlargement or extensions be made to the dwelling without the grant of planning permission by the local planning authority.*
 - The reason given for the condition is: *To prevent cumulative harm to the character and appearance of the locality.*
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Decision

1. The appeal is allowed and the planning permission Ref 22/01305/FUL for the demolition of current buildings to create dwellinghouse and detached garage granted on 12 May 2023 by Cheshire West and Chester Council, is varied by deleting condition 4.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have determined this appeal in the context of the revised Framework.

Main Issue

3. The main issue is whether the condition is necessary and reasonable having regard to the character and appearance of the surrounding area.

Reasons

4. Although the appeal site is located in a predominantly rural area there is a residential estate close to the appeal site. Beyond this however, the surrounding area is primarily characterised by only very sporadic development amongst fields. I am not aware of any area designations affecting the site or its surroundings and it is not within the Green Belt. The appeal site itself contains a large, detached dwelling, pool building and garage. These are set back from Mill Lane by gardens and are somewhat screened by mature trees and

hedgerows. The planning permission granted the replacement of these buildings with a new, larger dwelling and garage that provides accommodation in the roof.

5. Condition 4 does not refer to any specific provisions or Classes within the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, it describes a broad range of permitted development rights which I understand would at least include Schedule 2, Part 1, Classes A, B, D, E and G. It would only restrict the provisions of Class A insofar as it relates to extensions and enlargements, any improvements permitted by this Class would be unaffected.
6. There is a lack of precision in the wording of the condition given the lack of reference to any specific provisions or classes. The condition references enlargement and extension which are terms specifically used within Class A. However, without reference to this class I cannot be certain that it does not also relate more broadly to any extension or enlargement of the property, such as through a porch, chimney or dormer window. Therefore, this wording could lead to different interpretations of the condition being applied in each case and I do not find it to be suitably precise. I find a similar degree of uncertainty with the reference to building, enclosure or structure within the site curtilage. In considering this I have been mindful of the Planning Practice Guidance (the PPG)¹ which requires the relevant provisions of the GPDO to be referred to in any conditions restricting them.
7. The Framework, under Paragraph 54, sets out that planning conditions should not be used to restrict national permitted development rights unless there is a clear justification to do so. In this case, and as noted above, the justification given by the Council is to prevent cumulative harm to the character and appearance of the locality. Given the brief justification provided, I do not find that this to be sufficient to restrict the broad range of permitted development rights above. This is especially so as the site is already residential and discrete from the wider rural area as a result of its character and boundary treatments. Moreover, the rights afforded by permitted development are modest and so I find it very unlikely that, in this case, they would have the potential to be unacceptably prominent or intrusive in public views. This is especially so given the size of the plot, the orientation of the replacement dwelling and its relationship to the residential estate nearby.
8. As noted above I understand the appeal site is not covered by any area designations such as the Green Belt. Therefore, whilst the replacement dwelling would be larger than the existing one, this increase is not so significant as to justify the removal of permitted development rights.
9. In light of the above, condition 4 is imprecise and removes a broad range of permitted development rights without sufficient justification. The condition is therefore not necessary or reasonable to ensure the protection of the character and appearance of the surrounding area. Therefore, the removal of condition 4 would not conflict with the aims of chapter 12 of the Framework in achieving well-designed and beautiful places, including Paragraph 135 which requires developments to be sympathetic to and maintain a strong sense of place, and Paragraph 54 regarding permitted development rights as outlined above.

¹ Paragraph: 017 Reference ID: 21a-017-20190723

Conclusion

10. For the reasons given above, I conclude that the appeal should be allowed. I therefore vary the planning permission by deleting condition 4.

Samuel Watson

INSPECTOR