



Appeal Decision

Site visit made on 27 March 2024

by **M Aqbal BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2024

Appeal Ref: APP/W1850/W/23/3328518

Oaklands, Peterchurch, Herefordshire HR2 0SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Robert Peel against the decision of Herefordshire Council.
 - The application Ref 231547 was approved on 24 July 2023 and planning permission was granted subject to conditions.
 - The development permitted is proposed detached garage.
 - The conditions in dispute are Numbers 1, 3, 4 and 5 which state that:
Condition 1: The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
Condition 3: The garage hereby permitted shall be used solely for the garaging of private vehicles and for purposes incidental to the enjoyment of the dwelling house as such and not for the carrying out of any trade or business.
Condition 4: The garage and access thereto must be reserved for the garaging or parking of private motor vehicles and the garage shall at no time be converted to habitable accommodation.
Condition 5: Notwithstanding the provisions of article 3(1) and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015,(or any order revoking or re-enacting that Order with or without modification), no development which would otherwise be permitted under Class E of Part 1 and of Schedule 2, shall be carried out.
 - The reasons given for the condition are:
Condition 1: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.
Condition 3: To ensure that the garage is used only for the purposes ancillary to the dwelling and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
Condition 4: To ensure adequate off street parking arrangements remain available at all times and to comply with Policy MT1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework
Condition 5: In order to protect the character and amenity of the locality, to maintain the amenities of adjoining property and to comply with Policy SD1 of the Herefordshire Local Plan – Core Strategy and the National Planning Policy Framework.
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Decision

1. The appeal is allowed and the planning permission Ref 231547, for proposed detached garage at Oaklands, Peterchurch, Herefordshire HR2 0SP, granted on 24 July 2023 by Herefordshire Council is varied by deleting conditions 1,4 and 5 and substituting for condition 3 the following condition.

3) The building hereby permitted shall be used solely for the garaging of private vehicles and purposes incidental to the enjoyment of the dwelling house.

Main Issue

2. The main issue is whether the disputed conditions are reasonable and necessary.

Reasons

Condition 1

3. This condition seeks to ensure the implementation of the extant planning permission within three years from the determination of the application as a legislative requirement under Section 91 of the Town and Country Planning Act 1990.
4. Ordinarily, this condition is discharged through the implementation of the planning permission within the relevant timescale and rarely removed. Based on my observations and the submissions before me, the planning permission was implemented within the relevant time scale. As such, this condition is no longer necessary.

Condition 3

5. Based on the description on the application form, the approved building is a garage. A garage by definition is intended to be used for the storage of vehicles. The appellant's submissions also confirm that this building would be used as a garage for at least one car (a classic Mini) as well as other general domestic storage. This is consistent with the submitted Design and Access Statement, which also suggested that the garage would be used as a workshop. Given the size of the garage, it is likely that this could accommodate a vehicle and allow space for a workshop and storage, incidental to the enjoyment of the dwelling house.
6. Given the overall scale of the garage and its proximity to a neighbouring property, I understand the concern of the Local Planning Authority ('LPA') that this could be used for a trade or business, to the detriment of the living conditions of neighbours. Even so, if the garage is used in such a manner, then the LPA have other powers to deal with this.
7. Nevertheless, the approved building was proposed, considered and determined as a garage for purposes incidental to the enjoyment of the dwelling house. As such, to define the permission and to ensure that the garage is used for its intended purpose, vehicle parking and purposes incidental to the enjoyment of the dwelling house, I have suggested an alternative condition 3.

Condition 4

8. The LPA advise that condition 4 is necessary to ensure that the building remains available for the parking of vehicles and is not utilised as habitable accommodation without assessment of any associated impacts given the wider context of the site and scale of the garaging. This includes, the use of the approved building as habitable space, which the LPA asserts would result in the loss of parking spaces within the garage and potential increased parking requirements associated with additional occupation.
9. Notwithstanding the approved garage, the appellant advises that there is currently sufficient on-site parking and manoeuvring/turning space to enter and leave the site in a forward direction. I also observed this and have no

evidence to the contrary to suggest that without the approved garage, the host dwelling would have insufficient on-site parking.

10. Whilst I note the LPAs concern about the use of the garage for habitable accommodation, such a proposal is not before me. As such, and in light of my proposed condition 3, I am not persuaded that condition 4 is necessary or reasonable.

Condition 5

11. The National Planning Policy Framework says that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.
12. Disputed condition 5, removes permitted development rights under Class E of the GPDO for: the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.
13. Although the approved garage occupies a sizeable footprint, this is largely located to the side of the host dwelling. Because of this arrangement and despite incorporating a number of smaller buildings and structures, the host dwelling retains a large rear garden. This garden area is also set back from the highway and is in part screened by boundary treatments.
14. Moreover, the host dwelling benefits from a more generous plot relative to neighbouring properties and forms part of an established residential area, where buildings in rear gardens are not uncommon.
15. Furthermore, permitted development rights under Class E of the GPDO are subject to certain limitations and conditions, which control the scale and extent of such development.
16. Drawing on the above reasons, I am not persuaded that the appeal site is particularly vulnerable to overdevelopment or that by utilising permitted development rights under Class E of the GPDO, this would result in any unacceptable harm to the character of the plot and amenity of the wider residential context. As such, condition 5 is not reasonable, necessary or justified.

Other Matters

17. Following the granting of the extant planning permission, Natural England have advised the LPA of increased Impact Risk Zones, which includes the appeal site. Although I have been provided limited information on this matter, the LPA assert that because the garage includes a toilet any change to the use that would increase water flows (such as conversion to habitable space rather than ancillary garaging to the host dwelling and existing occupants) would require the undertaking of Habitat Regulations Assessment ('HRA') by the competent body.
18. However, the proposal is not for a change of use. In fact, the proposal is for a domestic extension (incorporating a toilet) to an existing dwelling. Therefore,

on this basis, I have no reason to conclude that a HRA is necessary for the proposal before me.

Conclusion

19. For the reasons given above, I conclude that the appeal should succeed. I will delete disputed conditions 1, 4 and 5 and substitute condition 3 for an alternative condition 3.

M Aqbal

INSPECTOR