



Appeal Decision

Site visit made on 19 June 2024

by A Veevers BA(Hons) PGDipBCon MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2024

Appeal Ref: APP/R0660/W/23/3335857

Padacre House, Moss Mere, Smallwood CW11 2XG

- 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 and Mrs Knowlson against the decision of Cheshire East Council.
 - The application Ref 23/0928C was approved on 6 December 2023 and planning permission was granted subject to conditions.
 - The development permitted is construction of a new dwelling.
 - The condition in dispute is No. 10 which states: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that order), no development (as defined by Section 55 of the Town and Country Planning Act 1990) as may otherwise be permitted by virtue of Class(es) AA, A, B, D, E of Part 1 Schedule 2 of the Order shall be carried out.*
 - The reason given for the condition is: *To ensure continued control over the extent of further building on the site noting the rural location of the site and the justification for the grant of planning permission.*
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Decision

1. The appeal is allowed and the planning permission Ref 23/0928C for the construction of a new dwelling at Padacre House, Moss Mere, Smallwood CW11 2XG granted on 6 December 2023 by Cheshire East Council, is varied by deleting condition 10.

Background and Main Issue

2. Planning permission for a replacement dwelling was granted on 8 January 2021¹ (the first permission). That permission did not include a condition removing permitted development (PD) rights. The original dwelling was subsequently demolished but before the replacement dwelling was erected, a further permission was granted on 9 December 2022 for an alternative design of dwelling² (the second permission). This permission was subsequently varied by removing a condition in relation to boundary treatment³. In effect, this created a separate, third, standalone permission which is the permission subject to this appeal (the appeal permission).
3. The appeal permission included several conditions. Condition 10 removes PD rights under Class AA (upward extensions), Class A (extensions), Class B (roof additions), Class D (porches) and Class E (outbuildings) of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The appeal seeks to remove the condition in its

¹ LPA Ref: 20/2096C (the first permission)

² LPA Ref: 22/1368C (the second permission)

³ LPA Ref: 23/0928C (the appeal permission)

totality. It is clear from the Council's decision notice and officer report (OR) that the reason for the disputed condition is to protect the character and appearance of the rural location of the site as well as that of the host building.

4. Taking the above background into account, the main issue is therefore whether the condition is reasonable or necessary in the interests of the character and appearance of the host dwelling and the surrounding area.

Reasons

5. The appeal site is located in the open countryside where, for development plan purposes, development is strictly controlled. Policy PG6 of the Cheshire East Local Plan Strategy 2010-2030, adopted July 2017 (CELPs) sets out that within the open countryside, only certain types of development will be permitted, with a number of exceptions. One of the exceptions includes the replacement of existing buildings (including dwellings) by new buildings not materially larger than the buildings they replace. The policy goes on to state that the acceptability of such development will be subject to compliance with other policies in the Local Plan.
6. Policy RUR13 of the Council's Site Allocations and Development Policies Document, December 2022 (SADPD) sets out similar criteria for replacement dwellings outside of settlement boundaries and provides advice on what should be taken into account in assessing what would constitute a materially larger dwelling.
7. The dwelling approved by the second permission has now been constructed. It is a large two storey detached property which sits within a large plot which also includes a detached timber triple garage. Other than occasional sporadic dwellings and farm buildings as well as two small detached dwellings close to the appeal property sharing the same access off Moss Mere, the site lies within a rural setting of undulating open fields and woodland.
8. I have been provided with the Council's OR for the first permission and note that the replacement dwelling proposed at that time was considered not to be materially larger than the building it replaced. No condition restricting PD rights was imposed. In terms of the second permission, although the development was adjudged to be acceptable because the changes from the first permission were minor, the Council sought to restrict any further enlargement of the property or any other buildings within its curtilage through the removal of PD rights. No detailed justification for restricting PD rights was provided in the OR relating to this implemented permission.
9. However, the OR for the appeal permission explains that since a detached garage had already been included in the scheme approved by the second permission, any other extension to the dwelling could take the floor space, footprint and volume beyond that which would be permitted when assessed against Policy PG6 of the CELPS. Thus, it could result in a building that would be materially larger than the building that originally existed on the site.
10. It is also asserted by the Council that future roof additions, extensions and outbuildings could harm the rural character of the area. I note in this respect that the supporting text to Policy RUR13 of the SADPD sets out that a condition withdrawing PD rights for replacement buildings outside a settlement boundary

will be considered in each case having regard to the character of the site and its surroundings.

11. The removal of PD rights does not seek to prevent development. It gives the Council control over the future development of the site. However, paragraph 54 of the National Planning Policy Framework (the Framework) advises that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so. Planning Practice Guidance (the PPG) states that conditions restricting the future use of permitted development rights or changes of use may not pass the test of reasonableness or necessity, and that 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 necessity⁴.
12. I note the GPDO places no restrictions on PD rights in areas other than in designated areas such as a National Park or a National Landscape. This suggests that development carried out under PD would not necessarily be seen as harmful in other areas. As such, the appeal site's location within the open countryside would not, in itself, provide justification to warrant removal of PD rights.
13. The appeal property is one in a small cluster of properties on the southern side of the road, accessed from a single driveway. I observed at my site visit that the other, smaller properties, identified as The Annex and The Workshop, include alterations and extensions as well as residential paraphernalia within their gardens, although these properties lie outside the red edge boundary of the appeal site. Given the various access tracks and boundary treatments between the properties, the appeal property is seen in the immediate context of other, albeit limited, development. In addition, trees and hedgerows border the appeal site and the other properties. These factors define and limit the degree of visibility within this rural area.
14. In terms of Class A, the appeal site is generous in size and well-screened from wider countryside views due to the intervening landform and vegetation. Although 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 building, and therefore sympathetic. Nevertheless, the dwelling was only acceptable because it was not materially larger than the original building, the detached garage block was not of an unreasonable scale and appearance and overall there was no conflict with the development plan.
15. Nonetheless, from the evidence presented, PD Rights were unfettered for the original dwelling and no compelling justification is before me to demonstrate why the dwelling now erected, which is not materially larger than the original and sits in a large plot, should be restricted in terms of the removal of PD rights. Furthermore, any significant extensions to the dwelling would still require planning permission. As such, given the context of this site, the effect on the character and appearance of the rural area as a consequence of extensions permitted under Class A would be limited.
16. Upward extensions permitted under Class AA would not be permissible because the dwelling was constructed after 28 October 2018. Even if they were, a prior

⁴ 017 Reference ID: 21a-017-20190723

approval application would be required before an upwards extension could proceed under Class AA. The Council would have the opportunity to consider the effect of its design and architectural features on external appearance. Therefore, a degree of control over the nature of any future upwards extension pursued through this route would remain.

17. Alterations to the roof permitted through Class B would predominantly affect the rear elevation. Given these elevations face out towards the open countryside, and any extension could not exceed the highest part of the roof, I find that such small-scale domestic enlargement or alteration to the roof compliant with the size and material requirements of the GPDO could remain sympathetic to the host building. Such roof additions or alterations would consequently be unlikely to generate additional material harm to the character and appearance of the area or the host building.
18. Similarly, the erection of a porch under Class D of Part 1 would be a minor addition which would not harm the character and appearance of the area or the host dwelling.
19. In terms of Class E, opportunities for outbuildings to the west of the dwelling would be limited due to the red line boundary of the site, the detached garage and boundary trees. Similarly land to the east would be partially constrained by the distance between the dwelling and the red line boundary adjacent to sloping land. The majority of land associated with the dwelling is located between the dwelling and the road, thus limiting the potential for outbuildings in this area due to the requirements of Class E. Therefore, the notable sense of space at the front of the house would be retained. Even if larger outbuildings or containers could be erected within the rear garden, it is not excessive in scale and any single storey building or structure would be seen against the backdrop of the dwelling itself. Furthermore, the site is well-screened and, in this respect, I do not find it reasonable to restrict Part 1 Class E.
20. I am mindful that Condition 10 would not prevent the appellants (or a future owner) from applying for planning permission for further enlargement, improvement or other alteration of the resulting house. Any larger development would be subject to assessment under planning policy through the submission of a planning application or prior approval that would allow the Council to consider a proposal on its planning merits. Nevertheless, based on the evidence before me, and having regard to the Framework and the PPG, I am not satisfied that the removal of the specified PD rights in this case is reasonable or necessary.
21. I therefore conclude that Condition 10 is not reasonable or necessary in the interests of the character and appearance of the host dwelling and the surrounding area and the aims of the Framework in this regard. As such, the proposal would not conflict with Policy PG6 of the CELPS or Policy RUR13 of the SADPD, which both seek to protect the character and appearance of the open countryside.

Conclusion

22. For the reasons given above, I conclude that the appeal should be allowed and I vary the planning permission by deleting the disputed condition.

A Veevers INSPECTOR