



Appeal Decision

Site visit made on 11 July 2024

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2024

Appeal Ref: APP/P1560/W/23/3333016

1 The Pavilion, Spring Valley Lane, Ardleigh, Essex CO7 7SD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs Roger & Jean Wyncoll against the decision of Tendring District Council.
 - The application Ref is 23/00721/ROC.
 - The application sought planning permission for development described as: *"To demolish No 1 & No 2 The Pavilion and replace with a new two bedroomed single storey residential dwelling with parking and amenity provision"*, without complying with a condition attached to planning permission Ref 21/02051/FUL, dated 26 January 2022.
 - The condition in dispute is No 6, which states that:
Notwithstanding the provisions of Schedule 2 Part 1 Classes A to E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking and re-enacting that Order with or without modification), no extensions, additions or alterations to the roofs of the dwellings hereby approved shall be carried out except where express planning permission has been obtained.
 - The reason given for the condition is:
To ensure that private residential amenities of the neighbouring and future occupiers are protected.
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Decision

1. The appeal is allowed and planning permission is granted for development described as *"To demolish No 1 & No 2 The Pavilion and replace with a new two bedroomed single storey residential dwelling with parking and amenity provision"* at 1 The Pavilion, Spring Valley Lane, Ardleigh, Essex CO7 7SD, in accordance with the application Ref 23/00721/ROC, without compliance with condition number 6 previously imposed on planning permission Ref 21/02051/FUL, dated 26 January 2022, and subject to the conditions in the attached schedule.

Background and Main Issue

2. Planning permission was granted in 2022 for the development of a dwelling as described in the banner heading above. Condition No 6 of the planning permission removed the permitted development rights under Schedule 2 Part 1 Classes A to E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the 'GPDO'), or any Order revoking and re-enacting the GPDO with or without modification. The condition prevents any extensions, additions or alterations to the roofs of the approved

dwelling being carried out except where express planning permission has been obtained.

3. The condition was imposed, as stated in the original decision notice, to ensure that the private residential amenities of neighbouring and future occupiers are protected. However, the Council's reason for refusing the application subject to the current appeal includes concerns that the proposal would amount to material harm to the openness of the rural area.
4. Having regard to the background set out above, the main issues are whether the disputed condition is necessary and reasonable having regard to:
 - the living conditions of neighbouring and future occupiers; and
 - the character and appearance of the area.

Reasons

Living conditions

5. Classes A to E of Schedule 2 Part 1 of the GPDO summarily permit various forms of development within the curtilage of a dwellinghouse.
6. Paragraph 56 of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the PPG) advise that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
7. The PPG advises that area-wide or blanket removal 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. Although this condition applies to a single property, it must still satisfy the tests outlined in the Framework.
8. During my visit, the building was under construction and appeared mostly complete externally. The properties of Nos 1 & 2 The Pavilion, slated for demolition under the planning permission, were still standing. However, condition No 3 of the planning permission mandates their demolition before the newly approved dwelling can be occupied.
9. The Council's concerns specifically relate to the potential for inappropriate future extensions, particularly within the roof, and a proliferation of outbuildings, which could harm the living conditions of neighbouring and future occupiers.
10. Given the provisions of condition No 3, once the permitted dwelling is lawfully occupied, the nearest neighbouring properties would be at a significant distance. Although the permitted dwelling is close to the garden boundary of Woodland Lodge, and some overlooking of the garden might occur through future extensions to the roof, this is a common situation among residential properties. A degree of overlooking is expected, and the substantial size of the garden ensures that outdoor privacy could still be maintained in other areas.
11. Whilst the Council has raised concerns regarding noise and disturbance, these concerns are unsubstantiated. With regard to potential outbuildings, I am not

convinced they would adversely affect the living conditions of nearby properties.

12. The Council's reason for the condition refers to the living conditions of future occupiers, a concern also noted in the subsequent evidence. It is acknowledged that the wider site, comprising 3 other dwellings, is currently in single ownership, with the possibility for properties to be sold individually in the future. However, no substantive details have been provided regarding these concerns or the broader implications of removing the condition for future occupiers. My site visit did not reveal any issues in this respect, and I am therefore not persuaded that the condition is reasonable or necessary for protecting the living conditions of future occupiers.
13. For the reasons stated, I am not convinced that the condition is reasonable or necessary to protect the living conditions of neighbouring or future occupiers. The removal of this condition would not conflict, in respect of this issue, with Policy SP7 of the Tendring District Local Plan 2013-2033 and Beyond Section 1 – North Essex Authorities' Shared Strategic Section 1 Plan – Adopted January 2021 (the S1P) or Policy SPL3 of the Tendring District Local Plan 2013-2033 and Beyond Section 2 – Adopted 25th January 2022 (the S2P), which together seek to protect the amenity of existing and future residents and users, and for development to not have a materially damaging impact on the privacy, daylight or other amenities of occupiers of nearby properties.

Character and appearance

14. The Council's officer report for the application subject to this appeal includes an excerpt from the original planning permission report, which suggests that permitted development rights should be removed to avoid inappropriate extensions which would harm the openness of the countryside. Although this concern was not formally cited as a reason for the condition, I will nonetheless consider it.
15. The permitted dwelling is situated in a rural area, accessed via a private drive from the main road. The site is surrounded by woodland to the east, west, and north, which envelopes and screens the appeal site and its neighbouring small cluster of dwellings. While the properties within this cluster are visible to each other, they are well-spaced.
16. The Council is concerned that further development could significantly increase and urbanise the built environment in this rural location. However, given the sporadic nature of development in the area, I am not persuaded that the implementation of permitted development rights for small-scale domestic alterations would lead to a scale or nature of development that would harm the area's rural character or appearance. Thus, I do not find the condition necessary in this regard.
17. Furthermore, the dwellings set for demolition would have benefitted from such permitted development rights. Although the replacement dwelling is of larger scale than the dwellings it replaces, the absence of identifiable harm leads me to conclude that removing these rights for the new dwelling would not be reasonable.
18. Therefore, I find that the condition is neither reasonable nor necessary to protect the character and appearance of the area. Its removal would not

conflict, in respect of this issue, with Policy SP7 of the S1P and Policy SPL3 of the S2P, which collectively seek for development to respond positively to local character and context to preserve and enhance the quality of existing places and their environs, and for development to relate well to its site and surroundings.

Conditions

19. The PPG makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should also restate the conditions imposed on earlier permissions that continue to have effect.
20. As I have no substantive information before me about the implementation status of all other conditions, I shall impose all those that I consider remain relevant. As my observations on site confirmed that the development has commenced, the condition relating to the time limit for commencement is no longer necessary.
21. The Council's suggested approved plans condition refers to slightly different plan revisions than those listed on the original decision notice. Since the appeal relates only to the removal of condition No 6 from the original planning permission, and no explanation has been provided for the reference to different plan numbers, I will reinstate the plans condition as it appeared on the original planning permission.

Conclusion

22. For the reasons given above I conclude that the appeal should be allowed subject to the conditions in the attached schedule.

P Storey

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in strict accordance with the following approved plans and documents: PL003, PL004, PL005, TP03-01/12/2021, TP04-01/12/2021, TPO02-01/12/2021, Design and Access statement dated 1st December 2021.
- 2) Prior to the first occupation of the dwelling hereby approved the existing building known as 1 and 2 The Pavilion must be fully demolished, including all associated demolition material removed from the site, and the landscaping scheme shown on approved plan TP03-01/12/2021 must be fully implemented.
- 3) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October - March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority agrees in writing to a variation of the previously approved details.
- 4) Prior to the commencement of development a 15m buffer zone must be marked out from the edge of the woodland closest to the development hereby approved. This area must be kept clear at all times during the construction phase of the development and must not be subject to any vehicular movements or used for storage purposes.
- 5) Prior to the first occupation of the dwelling hereby approved, an electric vehicle charging point shall be provided.

**** End of conditions ****