

Appeal Decision

Site visit made on 10 September 2024

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/J0405/W/24/3341388

Cowleas, Spicketts Lane, Cuddington, Buckinghamshire HP18 0AY

- 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 Hughes against the decision of Buckinghamshire Council.
 - The application Ref 23/03972/APP was approved on 8 March 2024 and planning permission was granted subject to conditions.
 - The development permitted is Householder application for erection of a single storey side and rear extension.
 - The condition in dispute is No 7 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order, with or without modification), no enlargement of dwelling, dormer windows, nor the erection of any garage buildings, structures or outbuildings shall be erected within the curtilage of the dwelling without specific grant of planning permission from the Local Planning Authority.
 - The reason given for the condition is: To protect as far as possible, the character of the area and the amenities and privacy of nearby properties in accordance with Policies BE2 and BE3 of the Vale of Aylesbury Local Plan 2013 - 2033 and Policy CDN 05 of the Cuddington Neighbourhood Plan.
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Decision

1. The appeal is allowed and the planning permission Ref 23/03972/APP for Householder application for erection of single storey side and rear extension at Cowleas, Spicketts Lane, Cuddington, Buckinghamshire HP18 0AY granted on 8 March 2024 by Buckinghamshire Council, is varied by deleting condition No 7 and substituting it for the following condition:
 - 1) 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), no development permitted by virtue of Class A and Class B of Part 1 of Schedule 2 to the Order shall be undertaken.

Background and Main Issues

2. Planning permission was granted for a single storey side and rear extension which included the removal of permitted development rights for the enlargement of the dwelling, dormer windows, garage buildings, structures and outbuildings. The Council consider that the condition is necessary to protect the character of the area and amenities and privacy of nearby properties. The appellant considers the removal of permitted development rights for garage buildings, structures and outbuildings to be unreasonable.
3. The main issues therefore are:
 - whether the condition is reasonable or necessary in the interests of the character and appearance of the area, and
 - whether the condition is reasonable or necessary in the interests of the living conditions of the occupiers of neighbouring properties with regard to privacy.

Reasons

Character and appearance

4. Cowleas is a large, detached dwelling which is located within a large plot which is made up of mostly grass and landscaped garden. The site is accessed from Spicketts Lane and is well screened by dense hedgerows and trees which results in an open and verdant character and appearance.
5. The proposal would result in a large extension to the original building that would increase the overall footprint. The overall increase in size is significant and further works to enlarge the main dwelling beyond what permission has been granted for, or to introduce dormer windows, could result in disproportionate additions which would harm the character and appearance of the area.
6. In relation to the removal of permitted development rights for garage buildings, structures and outbuildings, the Council consider that the appeal site provides a transitional gap between the built up area and countryside, also noting the location of the appeal site within the Brill-Winchendon Hills Areas of Attractive Landscape – a local landscape designation and close to a Conservation Area.
7. The appeal sites large garden could accommodate a number of structures and outbuildings. However, development would be restricted to the rear garden that would unlikely be visible from both Spicketts Lane and Aylesbury Road due to the dense borders of trees and vegetation. Even with the maximum overall heights that are allowed through permitted development rights, very little would be visible because of this screening. As a result, even if outbuildings were constructed the transitional gap would still be present and the open and verdant character and appearance of the area would be maintained.
8. I note that there is no control over the retention of the boundary to the appeal site, however there is no evidence that this would be removed by the appellant. In any case, without this there is no boundary fencing other than

post and wire so the removal would significantly reduce the privacy of the occupier's garden which would further reduce the likelihood of this happening.

9. As such, while the dwelling, together with the permitted development rights for extensions and dormer windows would conflict with Policies BE2 of the Vale of Aylesbury Local Plan (VALP) 2013-2033 Adopted Plan September 2021 (LP) and CDN 05 of the Cuddington Neighbourhood Plan 2017 to 2033 August 2022 (NP), I find that the dwelling, together with permitted development rights for garage buildings, structures and outbuildings would not conflict with these Policies. Amongst other things, these Policies seek to ensure that development respect and complements the physical characteristics of the site and its surroundings.
10. Accordingly, I find that the disputed condition is not reasonable or necessary in the interests of the character and appearance of the area.

Living conditions

11. The proposal would significantly extend the main dwellinghouse and having regard to the extant permission for a new dwelling which would be located close to the front of the house, further extensions through permitted development rights, in particular introducing dormer windows and extensions closer to this dwelling could harm the living conditions of these future occupiers.
12. In regard to garage buildings, structures and outbuildings, these would be restricted to the rear of the existing dwelling and as such would be largely blocked from views of the extant dwelling and be a sufficient distance away to protect privacy. There are no dwellings close to the rear of the appeal site that would have their living conditions effected through the construction of structures and outbuildings.
13. As such, while the dwelling, together with the permitted development rights for extensions and dormer windows would conflict with Policies BE3 of the LP and CDN 05 of the NP, I find that the dwelling, together with permitted development rights for garage buildings, structures and outbuildings would not conflict with these Policies. Amongst other things, these Policies seek to ensure that development does not unreasonably harm any aspect of the amenity of existing and future residents.
14. Accordingly, I find that the disputed condition is not reasonable or necessary in the interests of the living conditions of neighbouring properties with regard to privacy.

Other Matters

15. The appellant considers that the condition represents a blanket removal of permitted development rights which Planning Practise Guidance states are unlikely to meet the tests of reasonableness and necessity. The appellant also considers that the condition is not clear as to what permitted development rights have been removed. However, I find that the original condition as worded does not remove all permitted development rights and instead is restricted to certain developments which the Council consider would be harmful and these are clear and precise.

Conditions

16. As I have concluded that a condition is only reasonable and necessary to remove permitted development rights for the enlargement of the dwelling and dormer windows in the interests of the character and appearance of the area and living conditions of neighbouring occupiers, I will replace the condition subject to the appeal with one that refers to Classes A and B and not Class E.
17. In arriving at this conclusion I have had regard to the advice within the Planning Practice Guidance that conditions restricting permitted development rights should only be imposed in exceptional circumstances. The need to protect the character and appearance of the area and living conditions of neighbouring occupiers is one such an exceptional circumstance.

Conclusion

18. For the reasons given above, I conclude that the planning permission should be varied as set out in the formal decision.

D Wilson

INSPECTOR