



Appeal Decision

Site visit made on 20 November 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/D3125/W/24/3348136

**Vicarage Field, Church Road, Milton Under Wychwood,
Chipping Norton OX7 6LQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a grant of planning permission subject to conditions.
 - The appeal is made by Cade against the decision of West Oxfordshire District Council.
 - The application Ref 24/01368/S73 was approved on 9 July 2024 and planning permission was granted subject to conditions.
 - The development permitted is described on the Council's decision notice as "Variation of condition 2 of planning permission 21/00776/FUL to allow design and layout changes to both dwellings including the addition of two dormers and two rooflights (plot 1) and provision of office with dormer window above garaging (plot 2) (amended)".
 - 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 (or any Order revoking and re-enacting that Order with or without modification), no development permitted under Schedule 2, Part 1, Classes A, AA, B, C, D, E, G and H shall be carried out other than that expressly authorised by this permission.
 - The reason given for the condition is: Control is needed to avoid over development of the site and impacts on the setting of the Listed Building.
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Decision

1. The appeal is allowed and the planning permission Ref 24/01368/S73 for erection of two replacement detached dwellings and associated works at Vicarage Field, Church Road, Milton Under Wychwood, Chipping Norton OX7 6LQ granted on 9 July 2024 by West Oxfordshire District Council, is varied by deleting condition No 7.

Preliminary Matters

2. The description of the permitted development in the header is taken from the Council's decision notice for the planning application leading to this appeal. This application was made under section 73 of the Act and sought planning permission for the erection of two replacement detached dwellings and associated works as granted under planning permission reference number 21/00776/FUL (the original planning permission) but without complying with condition 2 of that permission. Planning permission is not required to vary a condition as suggested by the description of development on the Council's decision notice. As such, in my decision I used the description of development from the decision notice for the original planning permission. Also, in my decision I have referred to the site address as stated on the original planning permission but I have included the relevant post code for completeness. No injustice would be caused to any party by taking this approach.

3. This appeal seeks the removal or variation of condition number 7 attached to the planning permission subject of this appeal (the subject planning permission). This condition prevents development that otherwise would be lawful under permitted development rights (PDRs) as defined under various classes of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
4. Class A allows the enlargement or alteration of a dwellinghouse. Class AA defines the construction of an additional storey onto a dwellinghouse as permitted development. Class B relates to additions to a dwellinghouse roof while Class C allows other roof alterations. Class D covers porches and Class E covers buildings and other structures incidental to the enjoyment of a dwellinghouse. Class G relates to chimneys flues and similar features whereas Class H provides for microwave antennas. All of these classes include clauses and conditions that define works that are not permitted development.

Main Issues

5. In light of the provisions of paragraph 56 of the National Planning Policy Framework, the main issues are whether the disputed condition 7 is necessary and reasonable.

Reasons

The site and its surroundings and the effects of the development.

6. The site is in the Cotswold National Landscape Area of Outstanding Natural Beauty (the AONB). Also, it adjoins the churchyard to the Church of St Simon and St Jude. The 19th century church as well as the lychgate and boundary wall to the churchyard are grade II listed buildings (the LBs). It would seem the LBs gain their significance from their architectural and aesthetic interest as well as the church's local importance as a community building.
7. The appeal site used to contain a bungalow with a driveway and large lawn to the front. However, on my visit I saw the bungalow has been demolished and building works have commenced.
8. The development allowed under the subject planning permission will clearly change the appearance of the site. Nonetheless, it would be within a predominantly residential street and so I agree with the Council's position that the scheme would cause no harm to the natural qualities of the AONB.
9. The dwellings would be set back from the road with one towards the rear of the plot and the other more centrally positioned. As such, they would not be prominent in the most important views of the LBs from the road. Also, there would be limited intervisibility between the development and the LBs due to the screening effect of intervening trees within the churchyard. Therefore, whilst the proposal would affect the setting of the LBs, I agree with the Council's view that it would not harm their significance. In arriving at this view, I have had special regard to the desirability of preserving the LBs and their settings.

Necessity.

10. The Council is concerned the PDRs covered by condition no 7 could permit development that adversely affects the qualities of the AONB, the settings of

the LBs and the general character and appearance of the area. Also, there is a concern over how PDRs could affect the amount and quality of garden space.

11. The PDRs covered by Classes AA and B are subject to clauses that stipulate development is not permitted if the dwellinghouse affected is on article 2(3) land¹. This includes land within the AONB and so these clauses apply to the dwellings allowed by the subject planning permission. As such, Classes AA and B do not permit any development that would affect the houses. There is no need to impose a condition that removes PDRs set out under Class AA and Class B as they do not apply in any event.
12. The developments allowed under Classes C and G are most likely to affect the roofs of the permitted dwellings. Class H PDRs allow the installation of microwave antenna either on the houses or within their curtilages. These classes could lead to fairly minor alterations to the dwellings and the site as a whole. Such alterations would not be prominent within the street scene due to the set back position of the houses. Moreover, the works allowed under Classes C, G and H would not appear unusual amongst the other nearby residences, some of which include rooflights, chimneys and antennas. Within the context of the development approved under the subject planning permission, alterations allowed under Classes C, G and H would have no meaningful effect on the qualities of the AONB or the setting of the LBs.
13. The porches allowed under Class D would be small additions to the dwellings. They would have no harmful effect on the AONB's landscape or scenic beauty. A new porch to the front of the permitted house towards the centre of the site may be noticed from the road. Even so, the set back position means it would not be prominent within the street scene. Also, it would not detract or impede views of the LBs. Porches allowed elsewhere on the site would have no significant effect on the appearance of the dwellings or their surroundings.
14. As the site is in the AONB, Class A does not permit extensions that project beyond the principal or side elevations of the houses and only allows single storey rear extensions². Class E does not permit buildings or other structures that would be situated forward of the principal elevations of the houses or where any part would be between the side elevations and the boundary to the curtilage³. Given these restrictions, development allowed under Classes A and E would not be easily seen from the road. Therefore, such developments would not affect the general character and appearance of the area. Also, they would safeguard the defining qualities of the AONB. The Class A and Class E rights that are applicable to the appeal site would not allow buildings that fail to preserve the settings or the significance of the LBs.
15. Class A and Class E development is likely to reduce the amount of open garden space available for the occupiers of the dwellings. However, both of the residences would have gardens of a commensurate and appropriate size, despite trees overhanging the plot to the rear. I am taken to no planning policy that sets out minimum garden size standards or that promotes the removal of PDRs to ensure the retention of open garden space. Therefore, I

¹ Sub-paragraph AA.1(b)(i) under Class AA and sub-paragraph B.1(f) under Class B, Part 1 of Schedule 2 of the GPDO.

² Sub paragraphs A.1(e) and A.4(b) and (c) under Class A, Part 1 of Schedule 2 of the GPDO.

³ Sub paragraphs E.1(c) and E.3 under Class E, Part 1 of Schedule 2 of the GPDO.

find no sound reason why occupiers of the proposed dwellings should be deprived of the usual rights to construct extensions or incidental buildings.

16. For the above reasons, I conclude the restrictions imposed by the disputed condition are unnecessary. The condition is not required to ensure the development allowed by the subject planning permission would accord with policies OS2, OS4, EH9 and EH11 of the West Oxfordshire Local Plan 2018. Amongst other things, these policies look to ensure development is of a high quality design that respects local character, looks to conserve the beauty of the AONB and to preserve heritage assets and their settings.

Reasonableness.

17. Plans have been provided that show the development allowed under the original and the subject planning permissions. The layouts of the 2 schemes are similar with the main differences relating to the form and appearance of the dwellings.
18. The original planning permission is not subject to a condition that removes PDRs from the dwellings. It is unclear as to why the Council considers a condition akin to condition no 7 was not needed on the original planning permission but that it is required for the subject planning permission. The Council accepts that the development allowed under the original planning permission may still come forward if this appeal is dismissed⁴. In such circumstances, dwellings would be provided in a similar position to those proposed under the subject planning permission but without any restrictions on PDRs. Given this context, I conclude the imposition of the disputed condition number 7 is unreasonable.

Other Matter

19. The Council is concerned that allowing this appeal may lead to a proposal for 3 dwellings on the appeal site. I fail to see how the removal of the disputed condition would add support for any such proposal. Furthermore, any planning application for a third dwelling would need to be considered on its own merit. This contention fails to affect my overall conclusion.

Conclusion

20. For the reasons given above, I find the disputed condition is unnecessary and unreasonable. As such, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR

⁴ West Oxfordshire District Council Appeal Statement, paragraph 3.29.