



Appeal Decision

Site visit made on 9 January 2025

by **Alexander O'Doherty LLB (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 February 2025

Appeal Ref: APP/M1710/W/24/3336691

Twin Pines, Gentles Lane, Passfield, Liphook GU30 7RY

- 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 McKelvey against the decision of East Hampshire District Council.
- The application Ref is 31567/016.
- The application sought planning permission for conversion of existing barn to create a single self contained dwelling, associated garden and parking area (additional information received 20/6/2018) (ecology report received 30/8/2018) without complying with a condition attached to planning permission Ref 31567/010, dated 19 December 2018.
- The condition in dispute is No 4 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (or any Order revoking, re-enacting or modifying that Order) no extensions and outbuildings otherwise permitted under Schedule 2, Part 1, Class(es) A, B, C, D, E of said Order shall be carried out on the dwellinghouse or within its curtilage without the prior written consent of the Local Planning Authority.
- The reason given for the condition is: The site lies in a rural area where it is considered that further development on the site may be detrimental to the character of the area and as such be contrary to the adopted policies of the Planning Authority.

Decision

1. The appeal is allowed and planning permission is granted for conversion of existing barn to create a single self contained dwelling, associated garden and parking area (additional information received 20/6/2018) (ecology report received 30/8/2018) at Twin Pines, Gentles Lane, Passfield, Liphook, GU30 7RY in accordance with the application Ref 31567/016, without compliance with condition number 4 previously imposed on planning permission Ref 31567/010 dated 19 December 2018, and subject to the conditions set out in the attached schedule.

Preliminary Matter

2. The power to impose planning conditions under s70(1)(a) of the Town and Country Planning Act 1990 (as amended) must be interpreted with regards to the relevant case law, the development plan, and any other relevant material considerations, including the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG). Consequently, the development plan is a material consideration in considering the merits of this appeal to carry out development without complying with a condition which has been imposed on a planning permission.

Background and Main Issues

3. The appellants are seeking to remove condition No 4 which would have the effect of allowing permitted development rights within Classes A, B, C, D and E of Part 1

of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) to be exercised.

4. Therefore, the main issues in this appeal are whether or not the disputed condition is necessary and reasonable, having regard to the effect of the proposed change on the character and appearance of the host property and the area; on the living conditions of the occupiers of Summerfields, with particular regard to outlook and privacy; and on highway safety.

Reasons

Character and appearance

5. The appeal site comprises Twin Pines, a single-storey dwelling which has been converted from a former piggery, and the grounds surrounding it. Twin Pines is accessed from a public bridleway, which also provides access to a small number of other dwellings, including Summerfields to the west of the site.
6. The bridleway is heavily lined with trees in the vicinity of the site and as such Twin Pines is only clearly visible from near the entrance to the site. As it is set back some distance from the bridleway, Twin Pines is not a particularly prominent feature in views from the bridleway. Much of the site is surrounded by trees. To the east, a long fence separates the site from land further afield, including Hurlands.
7. The PPG provides 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 area-wide or 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 necessity¹. It is therefore necessary to make a site-specific assessment.
8. The site is located in the countryside for the purposes of planning policy. Policy CP19 of the East Hampshire District Local Plan: Joint Core Strategy (adopted 2014) (Core Strategy) provides that, amongst other things, the approach to sustainable development in the countryside is to operate a policy of general restraint in order to protect the countryside for its own sake. In this regard, I acknowledge the Council's concern that the original character of Twin Pines as a barn in a semi-rural location should be retained.
9. Policy C14 of the East Hampshire District Local Plan: Second Review (adopted 2006) (Local Plan) relates to the conversion of buildings in the countryside. Its supporting text, at paragraph 3.70 of the Local Plan, provides that, amongst other things, depending upon the merits of any individual case, further development, expansion or intensification of a re-used rural building may not be allowed and where appropriate, permitted development rights would be removed. Paragraph 3.79 of the Local Plan provides that the conversion of barns to residential use can be too destructive if it requires a structure that many farm buildings cannot easily be adapted to match, and that residential conversion can break the tradition of a working building and often destroys the original fabric and interior spatial qualities, disrupts wall and roofs and breaks up roof lines with dormer or rooflight windows.

¹ Paragraph 21a-017-20190723

10. Class A of Part 1 of Schedule 2 of the GPDO relates to the enlargement, improvement or other alteration of a dwellinghouse. Due to paragraph A.1.(c), Class A would not permit the addition of any further storey(s) to Twin Pines. It would remain as a single-storey dwelling. Paragraph A.1.(b) of Class A would ensure that any extensions to Twin Pines would not exceed 50% of the curtilage. Paragraph A.3.(a) of Class A would ensure that appropriate materials would be used.
11. In this case, it is clear that even with these limitations found within the GPDO, the form and design Twin Pines could potentially be altered such that its character as a former agricultural building could be compromised. I note that Twin Pines was last in use as domestic storage, but few details have been provided to illustrate how the original character of Twin Pines, including its built form as a modestly-sized former working agricultural building with interior spatial qualities to match, would be appropriately retained.
12. Nor has it been shown that any dormers or rooflight windows constructed under Class B of Part 1 of Schedule 2 of the GPDO or any alteration to the roof under Class C of Part 1 of Schedule 2 of the GPDO (including the installation of roof lights / windows) would not disrupt the existing roof form / lines of Twin Pines, thereby potentially diluting its character as a former agricultural building. Hence, it is necessary and reasonable for the disputed condition to restrict the use of permitted development rights with respect to Classes A, B, and C.
13. An addition of a porch to Twin Pines under Class D of Part 1 of Schedule 2 of the GPDO would be limited in footprint and height by paragraph D.1.(b) and by paragraph D.1.(c) of Class D, such that its effect on the integrity of Twin Pines as a former agricultural building would not likely be significant.
14. Class E of Part 1 of Schedule 2 of the GPDO relates to 'buildings etc incidental to the enjoyment of a dwellinghouse'. Paragraph E.1.(b) would ensure that the total area of ground around Twin Pines covered by buildings, enclosures and containers would not exceed 50% of the total area of the curtilage, excluding Twin Pines itself. Paragraph E.1.(d) would ensure that any building would not have more than a single storey.
15. The limitations found within the GPDO relating to Class E would restrict the size and scale of any building built. As such, even though any building built under Class E would somewhat reduce the spaciousness of the site, taking account of the limitations inherent within Class E and the restricted visibility of the site from the bridleway, the actual effect on the character and appearance of the area would not be significant.
16. Therefore, development under Classes D and E would not conflict with Policy CP6 of the Core Strategy which provides that, amongst other things, development will be permitted for the conversion of rural buildings for appropriate uses, including general residential use, provided that they do not harm the character of the site or its surroundings, or with Policy CP29 of the Core Strategy which provides that, amongst other things, new development will be required to seek exemplary standards of design and architecture with a high quality external appearance that respect the area's particular characteristics; that it is sympathetic to its setting in terms of its scale, height, and massing, and its relationship to adjoining buildings

and spaces around buildings; and that it makes a positive contribution to the overall appearance of the area.

17. In relation to development under Classes D and E, no conflict would arise with Policy HE2 of the Local Plan which provides that, amongst other things, alterations and extensions to buildings will only be permitted if they are designed to take account of the design, scale and character of the original building, its plot size and its setting.
18. I therefore find that the disputed condition is necessary and reasonable, having regard to the effect of the proposed change on the character and appearance of the host property and the area, in relation to Classes A, B, and C, but not in relation to Classes D and E. Consequently, with respect to Classes A, B, and C only, the proposal to remove the disputed condition is contrary to part a) of Policy CP29 of the Core Strategy which provides that new development will be required to seek exemplary standards of design and architecture with a high quality external appearance that respect the area's particular characteristics.

Living conditions

19. Twin Pines is situated near to Summerfields, a dwelling which has numerous windows directly facing the site. As mentioned above, any extension under Class A would be limited to a single-storey. Paragraph A.1.(j) would also limit any extension beyond the walls forming the side elevations of Twin Pines such that the enlarged part(s) of Twin Pines would not have a width greater than half of its current width. Paragraph A.1.(e) of Class A would ensure that any extension of Twin Pines would not extend beyond the principal (south-west) elevation further towards Summerfields.
20. Twin Pines already spans across much of the width of Summerfields facing the site. The increased bulk and massing of Twin Pines via the implementation of Class A would be unlikely to constitute a significant change over-and-above the existing situation with regards to the outlook available from the windows at Summerfields facing the site. Noting that any building erected under Class E would not be sited closer to Summerfields than the existing principal elevation of Twin Pines, any development erected under Class E would also not noticeably impinge upon the existing level of outlook from Summerfields and its grounds.
21. I observed that, despite the presence of trees and vegetation which conceals some of Summerfields from the site, there is intervisibility between the site and several of the windows at Summerfields facing the site. If the trees and vegetation were ever to be removed, the existing level of overlooking would be even more pronounced. Windows, including those serving the front door at Twin Pines, face towards Summerfields.
22. Considering that any development under Classes A or E would not extend / be sited closer to Summerfields than the existing principal elevation of Twin Pines, any development under those classes would be unlikely to significantly alter the existing level of overlooking towards Summerfields from the site. Taking account of the existing available views towards the windows at Summerfields available from within the site, it is unlikely that the addition or alteration of its roof under Classes B or C would materially exacerbate the existing potential for overlooking.

23. I therefore find that the disputed condition is not necessary and reasonable, having regard to the effect of the proposed change on the living conditions of the occupiers of Summerfields. No conflict would arise with Policy CP27 of the Core Strategy which provides that, amongst other things, development will not be permitted if it would have an unacceptable effect on the amenity of the occupiers of neighbouring properties through loss of privacy.

Highway safety

24. The Council have mentioned that the implementation of Classes A, B, and C could potentially increase the parking requirements on site. Considering the size of the site, which is large in comparison with Twin Pines, I consider that sufficient space would remain on site for adequate levels of parking to be provided in compliance with the relevant standards. The removal of the disputed condition would not therefore conflict with paragraph 116 of the Framework which provides that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.
25. I therefore find that the disputed condition is not necessary and reasonable, having regard to the effect of the proposed change on highway safety. No conflict would arise with Policy CP31 of the Core Strategy which provides that, amongst other things, development proposals will be required to provide adequate, convenient and secure vehicle and cycle parking in accordance with adopted standards.

Other Matters

26. The findings on the 2nd and 3rd main issues above are neutral matters, which do not change my findings on the first main issue above.
27. I have had regard to the appeal decisions referred to by the appellants. Plans have not been provided to illustrate the site-specific circumstances involved. As it has not been demonstrated that their circumstances are directly comparable with the appeal proposal, they do not change my findings on the main issues above.

Conditions

28. The PPG provides that decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect².
29. I have imposed the conditions which the Council have suggested remain relevant to the development, apart from the suggested condition relating to the timeframe for the implementation of the barn conversion (suggested condition No 1), as this is no longer necessary due to the barn having been converted. The first sentence of the Council's suggested condition No 5 appears to be incomplete, and as it is unclear which approved scheme is being referred to, I have imposed the relevant original condition from planning permission Ref 31567/010 (condition No 4 in the schedule below). In the event that some of these conditions, or all / part of condition No 4 in the schedule below, have in fact been discharged, that is a matter which can be addressed by the main parties.

² Paragraph 21a-040-20190723

30. As explained above, it would not be necessary or reasonable for the disputed condition to remove permitted development rights in relation to Classes D and E of Part 1 of Schedule 2 of the GPDO. The relevant condition has been amended to reflect this, and also to remove superfluous wording (condition No 2 in the schedule below).
31. The Council has suggested text for a number of informative notes. However, the PPG advises that informative notes do not carry any legal weight and cannot be used in lieu of planning conditions or a legal obligation to try and ensure adequate means of control for planning purposes³. Nevertheless, the appellants will be aware of the relevant matters highlighted the Council.

Conclusion

32. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed.

Alexander O'Doherty

INSPECTOR

³ Paragraph 21a-026-20140306

Conditions Schedule

- 1) The development hereby permitted shall be constructed in accordance with the materials specified within the approved details, unless details of other suitable materials are otherwise agreed in writing by the Local Planning Authority.
- 2) Notwithstanding the provisions 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 development permitted by virtue of Classes A, B, and C of Part 1 of Schedule 2 to the Order shall be undertaken on site.
- 3) The scheme for Drainage System Strategy received dated 25/11/2021 ref: SWDS - 2021 – 000064, that has been submitted and approved by the Local Planning Authority shall be maintained as submitted.
- 4) No development shall commence on site until the following details have been submitted to and approved in writing by the Local Planning Authority:-

(a) a desk top study report, documenting all the previous and existing land uses both on and adjacent to the site and including a conceptual site model and preliminary risk assessment. The report should be completed by a competent person and produced in accordance with national guidance, as set out in Contaminated Land Research Report No.11 and BS10175:2001;

and unless otherwise first agreed in writing by the Local Planning Authority:-

(b) a scheme outlining a site investigation and risk assessments designed to assess the nature and extent of any contamination on the site;

(c) a written report of the findings which includes, a description of the extent, scale and nature of contamination, an assessment of all potential risks to known receptors, an update of the conceptual site model (devised in the desktop study), identification of all pollutant linkages and unless otherwise agreed in writing by the Local Planning Authority and identified as unnecessary in the written report, an appraisal of remediation options and proposal of the preferred option(s) identified as appropriate for the type of contamination found on site;

and unless otherwise first agreed in writing by the Local Planning Authority:-

(d) a detailed remediation scheme designed to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment. The scheme should include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works, site management procedures and a verification plan outlining details of the data to be collected in order to demonstrate the completion of the remediation works and any arrangements for the continued monitoring of identified pollutant linkages. Site works and details submitted shall be in accordance with the approved scheme and undertaken by a competent person.

The above reports and site works should be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

- 5) The proposed hard surface/s shall either be made of porous materials or provision shall be made to direct run-off water from the hard surface/s to a permeable or porous surface within the site.
- 6) The development hereby permitted shall be carried out in accordance with the following approved plans and particulars:

Application form

CIL form - additional information

CIL form 1

Design and Access Statement

Drg no. 01 - location plan

Drg no. 02 - block plan

Drg no. 03 - proposed block plan

Drg no. 04 - existing and proposed floor plans

Drg no. 05 - existing elevations

Drg no. 06 - proposed elevations

Drg no. 07 - existing and proposed roof plan

Structural survey

Photographs

AA Environmental Ltd, Ecological survey received 30/8/2018

Habitats Regulations Assessment

Drainage report and strategy - SWDS - 2021 - 000064

UN.134.21. Phase I Geo-Environmental Assessment

External facing and roofing materials

Bridleway survey

Cil Notification liability notice

End of Conditions Schedule