
Appeal Decision

Site visit made on 25 March 2025

by **H Marriott MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 April 2025

Appeal Ref: APP/E2530/W/24/3354555

12 Overgate Road, Swayfield, Lincolnshire NG33 4LG

- 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 Deo against the decision of South Kesteven District Council.
 - The application Ref is S24/0625.
 - The application sought planning permission for the change of use of annexe/garage building to dwelling without complying with a condition attached to planning permission Ref S22/1067, dated 22 August 2022.
 - The condition in dispute is No 5 which states that: Notwithstanding the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no building, enclosure, swimming or other pool or container used for domestic heating purposes shall be constructed within the curtilage of the dwellinghouse without Planning Permission first having been granted by the Local Planning Authority.
 - The reason given for the condition is: The Local Planning Authority considers that further development could cause detriment to the amenities of the occupiers of nearby properties or to the character of the area, and for this reason would wish to control any future development and in accordance with Policy DE1 of the adopted South Kesteven Local Plan.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Deo against the decision of South Kesteven Council. This application is the subject of a separate decision.

Preliminary Matter

3. A revised National Planning Policy Framework (the Framework) was published in December 2024. In this instance, the policies of the Framework most relevant to the appeal are unaffected by the revisions. I am therefore satisfied that there is no requirement to seek further submissions on the revised Framework, and that no party would be disadvantaged by this.

Background and Main Issue

4. Planning permission was originally granted for the change of use of an annexe/garage building (No 12A) within the garden of 12 Overgate Road (No 12) to a dwelling in August 2022¹ (the original permission).

¹ Council Ref: S22/1067

5. The appellant seeks to implement the original permission without complying with Condition 5 which removed permitted development rights (PD rights) under Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for the provision of buildings etc incidental to the enjoyment of a dwellinghouse. The appellant contends that this condition is not reasonable or necessary and therefore seeks to remove it.
6. There is no dispute between main parties that this condition relates to land shown within the red line on the approved block plan (Drawing No MSP.1858/002D).
7. The main issue is whether Condition 5 is reasonable or necessary having regard to:
 - the character and appearance of the area; and
 - the living conditions of neighbouring occupiers with particular regard to noise and disturbance.

Reasons

Character and appearance

8. The settlement of Swayfield is surrounded by large agricultural fields with mature verdant boundaries. Overgate Road is a narrow rural route with grass verges and hedgerow lining the majority of both of its sides, with glimpses of the countryside achievable. As the route transitions into the village, there is a footway on one side and dwellings of varying sizes and design line the route and tend to be spaciouly arranged either fronting or setback from the road. The green edge alongside the spacious arrangement of buildings continues through the village and positively contributes to the country-lane character which assimilates into the wider rural setting.
9. The appeal site comprises No 12A, a modestly scaled detached two-storey building set back from Overgate Road. It shares the same gravelled driveway as No 12, a large detached two-storey dwelling located further towards the front of the site. There is currently no physical boundary between the land associated with No 12 and No 12A. Even so, the approved plans show that land associated with No 12A includes a sizeable area of grass land with a few scattered trees, defined on all other sides by post and rail fencing and/or hedgerow. The overall plot size is larger than that typically associated with surrounding plots and extends to the rear of dwellings fronting Overgate Road including Greystones Barn and Greystones and the side of 4 Overgate Road (No 4).
10. The appeal site slopes gently downwards away from No 12A towards its rear boundary. The agricultural fields beyond are highly visible from the appeal site given the land levels and limited screening provided by the existing boundary treatment. Other than two small sheds, the land associated with No 12A provides a substantial visual gap between the built form of the settlement and the countryside beyond. The modest size and discreet position of No 12A combined with the significant area of soft landscaping to its rear and side means that it is currently unassuming in the street scene and from the surrounding landscape.
11. Paragraph 57 of the Framework states that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects (the tests). More specifically, paragraph 55 of the Framework states that planning conditions

should not be used to restrict national permitted development rights unless there is clear justification to do so.

12. The Planning Practice Guidance² advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It further advises 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 necessity.
13. Whilst PD rights under Class E are subject to specific limitations that would limit the size and extent of buildings that could be erected, it would nevertheless allow for the provision of numerous sizeable buildings on the appeal site. This is by virtue of the fact that the total area of ground that can be covered by buildings, enclosures and containers within the curtilage constructed under Class E, could cover up to 50% of the total area of the curtilage. Even though any such buildings would be restricted in terms of their height, it is possible that buildings of considerable scale could be constructed which could go beyond a level that could reasonably be considered as a small scale domestic alteration.
14. Views of any potential development under Class E would be somewhat limited. Even so, views from more private vantage points including neighbouring dwellings would be achievable. Buildings constructed under Class E can be constructed up to 4 metres in height with no restrictions on materials. Consequently, a potential proliferation of significant buildings, including on the more peripheral parts of the appeal site closely associated with the countryside, would be possible. Even though there are neighbouring gardens, such development could be unsympathetic to the prevailing rural character and would diminish the open gap between No 12A and the countryside. There would be an increased likelihood of their erection as a consequence of the intensification of use resulting from the subdivision of No 12.
15. Whether the appeal site is currently located within the curtilage of No 12 is disputed by the main parties. The Council suggest that part of the appeal site is paddock land. The appellant has referred to a historic planning permission³ and the established garden use of the appeal site. However, the lawfulness of the land is not a matter for me to determine under this section 78 appeal and there is no evidence before me, for example a lawful development certificate, to confirm whether PD rights under Class E currently apply to all of the land within the appeal site, in association with the use of No 12. This limits the weight that I can attach to this or the potential for domestic freestanding structures on the appeal site as a fallback position.
16. Moreover, the removal of PD rights under Class E would not preclude the appellant from applying for planning permission for any development that would otherwise be permitted under Class E. Overall, I find that the imposition of the disputed condition is clearly justified due to the potential adverse impact of any future permitted development on the character and appearance of the area and it therefore meets the tests set out in the Framework.
17. I conclude that Condition 5 is reasonable and necessary having regard to the character and appearance of the area. Its removal would conflict with Policies DE1

² Planning Practice Guidance ID: Paragraph 017 Reference 21a-017-20190723

³ Council Ref: 97/0432/72/19 Change of use of paddock to garden and erection of garage at 12 Overgate Road, Swayfield

and SP3 of the South Kesteven District Council Local Plan 2011-2016 (2020) (LP) insofar as they require development to make a positive contribution to the local distinctiveness, vernacular and character of the area, to reinforce local identity and to not have an adverse impact on settlement pattern or the landscape/townscape character of the surrounding area; and to ensure infill development is in keeping with the character of the area.

18. It is acknowledged that Policy SP3 of the LP relating to infill development is not referred to in the Council's reason for Condition 5. It is not unusual for Council's to not list every relevant policy in their reasons for a condition and this does not alter the harm I have identified.

Living conditions

19. The appeal site shares a boundary with a number of neighbouring dwellings, all of which are already likely to experience limited levels of noise and disturbance associated with their location within a village environment. Any potential buildings etc under Class E would be limited to uses incidental to the enjoyment of a dwellinghouse. Such uses, combined with other limitations specified by this class would be unlikely to result in any harmful levels of noise or disturbance upon the occupiers of neighbouring occupiers over and above existing levels.
20. I conclude that Condition 5 is not reasonable and necessary having regard to the living conditions of neighbouring occupiers with particular regard to noise and disturbance. Therefore, I find no conflict with Policies DE1 and SP3 of the LP insofar as they require there to be no adverse impact on the amenity of neighbouring users.

Other Matters

21. The Grade II Listed Greystones and Greystones Barn are located close to the appeal site. I have been mindful of my statutory duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. The Council refer to the potential for the proposal to impact on these heritage assets in their report but this is not a matter in dispute. Having considered the separation distance and relationship between the appeal site and these assets, I am satisfied that no harm to significance would arise.
22. The appellant has drawn my attention to other appeal decisions deleting conditions removing permitted development rights including at 26 Hemstead Lane⁴, 13 Ashford Road⁵, River View⁶, Land to the rear of 6 St. Catharines Road⁷ and 10 Midgham Green⁸. The Council have also referred to an appeal decision at 3 Obthorpe Lane⁹ where an Inspector imposed a condition removing Class E permitted development rights in order to ensure that the character and appearance of that area would not be harmed. All of these examples appear to relate to sites in different settlements with differing site constraints. Whilst I have had regard to these decisions, each appeal must be determined on its own merits. Furthermore,

⁴ APP/A1910/W/23/3316329

⁵ APP/D0121/W/23/3332793

⁶ APP/M1595/W/21/3288105

⁷ APP/P1805/W/22/3290354

⁸ APP/W0340/W/22/3305276

⁹ APP/E2530/W/19/3230491

whether there is clear justification for removing permitted development rights is a matter of planning judgement based on the specific circumstances of each proposal.

23. My attention has also been drawn to the ability for neighbouring occupiers to utilise their Class E PD rights. Even if this is the case, this does not overcome the potential harm to the character and appearance of the area I have identified specifically in relation to the appeal site.

Conclusion

24. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR