



Appeal Decision

Site visit made on 15 April 2025

by **S Harley BSc(Hons) M.Phil MRTPI ARICS**

an Inspector appointed by the Secretary of State

Decision date: 02 May 2025

Appeal Ref: APP/L1765/W/24/3346448

Yosemite, 42 Halls Farm Close, Winchester, Hampshire, SO22 6RE

- 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 Joanna and Graham Slade against the decision of Winchester City Council.
 - The application Ref is 24/00478/FUL.
 - The application sought planning permission for 39 houses, 3 bungalows, garages, public open space, roads and footpaths without complying with a condition attached to planning permission Ref W09810/03 dated 15 November 1989 (new Ref 89/01329/OLD).
 - The condition in dispute is No 10 which states that: "Notwithstanding the provision of the Town and Country Planning General Development Order 1988 no building, structure, walls or fences of any kind shall be erected without the prior approval of the local planning authority in writing."
 - The reason given for the condition is: "To protect the amenities of the locality."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the original application was decided the Council has introduced a new computer system and changed the application reference number. For the avoidance of doubt I have included both numbers in the banner heading above.
3. The Town and Country Planning General Development Order 1988 (the 1988 GDO) was amended a number of times. It was replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This has also been amended and additional classes of permitted development have been added.
4. Since the 1988 GDO came into force the Circular 11/95 '*Use of conditions in planning permission*' has been withdrawn. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (the PPG) have been introduced. These state that the use of 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. These tests are the same as those in Circular 11/95. In December 2024 a revised Framework was introduced. References to the Framework in this Decision are to the latest version.
5. Planning permission was granted in 1989 for a residential estate. Condition No 10 of the original permission states no building, structure, walls or fences of any kind

shall be erected without the prior approval of the local planning authority in writing. This applies to all the properties in the estate in the interests of the amenities of the locality. As described on the planning application form the proposal is to *“remove the planning condition or to vary it to prevent freestanding buildings and structures, boundary walls or fences only ie Schedule 2 Part 1 Class E; Schedule 2 Part 2 Class A”*. This is because the appellants consider the condition does not meet the six tests a planning condition must comply with.

6. Much of the evidence focuses on procedural aspects of the appropriateness of determining a planning proposal relating to one dwelling on an estate. The planning application was accepted as valid by the Council and subsequently the appeal has been accepted as valid. It is quite clear from the appellants' documents that the proposal is in respect of a single property only, namely Yosemite, No 42 Halls Farm Close. This Decision focuses on the planning merits of the proposal.

Main Issue

7. The main issue is whether the condition in dispute is reasonable and necessary having regard to the amenities of the area.

Reasons

8. Halls Farm Close is residential estate of mainly detached houses set in clusters around a series of culs-de-sac. Many of the frontages are open with drives and front garden planting. Side boundaries are generally enclosed with brick walls some with hedges between them and the footpaths. The side walls of many of the houses are close together giving a tightly knit appearance to the clusters.
9. The distinctive character arises from the degree of spaciousness which is achieved as the culs-de-sac, apart from the main route, are relatively short so the houses are in smallish clusters, there are some side gaps at first floor where there are garages and there are pockets of open spaces including on the main route and at the end of the cul-de-sac which serves Yosemite. Some of the rear gardens appear quite small. From what I could see from the street there appears to have been relatively few alterations to the properties involving building, structure, walls or fences. In my judgement the disputed condition has served a useful planning purpose of maintaining the spaciousness of the original estate as a whole.
10. Yosemite is a detached house between a detached house and a detached bungalow. The rear garden is relatively spacious and contains a lawn, patio, shed and raised planting bed. It seems likely to me that some form of building, structure, walls or fences could be accommodated at the property without significant harm to the amenities of occupiers of other properties or the character and appearance of the area. However, there is no specific proposal for development as part of this appeal, although I note that the Council has indicated some form of dormer might be acceptable.
11. Section 73 gives an express power to apply for planning permission for the development of land without complying with conditions attached to an earlier permission. Importantly, it only confers power to amend or remove conditions and not to amend any other part of the permission e.g. the description of development. It is quite clear that at the time of the decision on the original application the Council intended to control all building, structure, walls or fences of any kind by way of the requirement for planning permission.

12. The condition may lack the rigour required for the imposition of conditions nowadays. But that in itself is not critical: the Courts have taken a purposive approach to the interpretation of conditions, and have found that a planning condition is only void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning, and not merely because it is ambiguous or leads to absurd results and that unfortunate drafting should not prevent giving the condition a sensible meaning if at all possible. In my judgement, despite being wide, the limitation under Condition 10 is relevant to planning, to the development then being permitted, enforceable and sufficiently precise in meaning albeit it does not specify particular classes of either the 1988 GDO or the GPDO which is generally considered to be best practice to conform to current guidance set out in the Framework and the PPG.
13. There may be properties on the estate where the control exerted through the mechanism of the need for express planning permission, by way of the disputed condition, would be necessary and reasonable to prevent development that would be harmful to the character and appearance of the area. However, the planning merits in relation to the whole estate are not matters that are before me in this appeal. Accordingly, because allowing this appeal could *only take effect as an independent permission to carry out the same development as previously permitted* as held by the Courts¹, it would not be reasonable to consider Yosemite in isolation. This is because occupiers of other houses on the estate would be deprived of their expectation that any building, structure, walls or fences would need a planning application upon which they could make representations and that such proposals could therefore be reasonably assessed in relation to the amenities of the area. On this basis I consider the retention of the disputed condition to be necessary and reasonable.
14. It may be feasible to identify a condition that could apply to the whole estate and also make an exception for Yosemite. Such a condition would have to be specific about what was being controlled and which properties it related to. It would also have to take account of current requirements under Paragraph 55 of the Framework which states that planning conditions should not be used to restrict permitted development rights unless there is a clear justification to do so and the PPG which states that conditions restricting the future use of permitted development rights or changes of use may not pass the tests of reasonableness or necessity.
15. The appellants have not suggested a wording that would be appropriate to apply to the whole estate. Nor would the proposed condition, put to the appellants by the Council in an email in March 2024, as an alternative to removing the disputed condition, be appropriate for the whole estate as it refers to only to Yosemite.
16. It is not for me, as the Planning Inspector for this appeal, to decide which permitted development rights should apply to which property or to find the wording of an appropriate condition that would meet the tests in the Framework and the PPG. Nor is it for me to decide which, if any, restrictions in respect of the 2015 GPDO should apply.
17. I conclude that the condition in dispute is reasonable and necessary as it continues to fulfil a useful planning purpose in protecting the character and

¹ Lambeth LBC v SSHCLG [2019] UKSC 33

appearance of the whole estate. Its removal or variation would conflict with the Policy CP13 of the Winchester District Local Plan Part 1 – Joint Core Strategy 2013; and Policies DM16 and DM17 of the Local Plan Part 2 2017, which together, amongst other things, seek to protect the local environment and a distinctive local character.

Other Matters

18. The appellants have provided a number of examples from elsewhere. These include a number of cases where applications have been made in respect of “varying” a restriction in relation to one property on an estate. From what I have seen, unlike for the appeal before me, these have in common a proposal for a specific development which can be assessed in terms of its planning merits.
19. The appellants also consider that: the limitations of the disputed condition are more onerous than may often be the case elsewhere including conservation areas, national parks, the Green Belt; and other local planning authorities’ practice; that the Council has been inconsistent in its approach as to whether a similar restriction has been imposed at all or different wording has been used; whether a planning application is required or not; in terms of taking enforcement action or not; and that in some cases conditions have been imposed in the regularising of unauthorised development. Whilst I acknowledge the desirability of consistent decisions in relation to planning proposals it is for the Council and not for me to resolve such perceived inconsistencies.
20. I sympathise with the wish to have the freedom that permitted development rights provide, including ones that may have accrued under amendments to the 1988 GDO and the GPDO, such as solar panels and air source heat pumps; to avoid costs associated with planning applications; and the uncertainty of whether planning permission is required or not. However, for the reasons set out above I have concluded that the current proposal is not a means by which such freedoms can be achieved and the wishes of the appellants do not lead me to a different conclusion.
21. Moreover in my experience there may be other options such as pursuing a planning application for a specific proposal or to apply to vary or remove the option for the whole of the original estate, serving the appropriate notice and providing information about the effects in planning terms on the amenities of the area.
22. None of the above matters lead me to any different conclusions.

Conclusion

23. I have found that the disputed condition continues to fulfil a useful planning purpose in protecting the character and appearance of the estate as a whole and it would be unreasonable to remove it from all the properties in the original estate. There would be conflict with development plan policies as set out above. An alternative wording for a condition that would serve this purpose whilst releasing the appeal site from its limitation has not been put forward. I find insufficient material considerations to justify a conclusion other than in accordance with the development plan. The appeal should be dismissed.

S Harley INSPECTOR