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## Appeal Decision

Site visit made on 6 August 2025

by **J D Clark BA (Hons) DpTRP MCD DMS MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

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### Appeal Ref: APP/P3040/W/25/3363441

#### Garages south east of Woodbine Cottage, Works Lane, Barnstone NG13 9JJ

- 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 Mark Enderby against the decision of Rushcliffe Borough Council.
  - The application Ref is 24/02102/VAR.
  - The application sought planning permission for construction of new three bedroom detached dwelling (Resubmission of (22/00711/FUL) without complying with a condition attached to planning permission Ref 22/01158/FUL, dated 4 August 2022.
  - The condition in dispute is No 10 which states that: *Notwithstanding the provisions of Schedule 2, Part 1 Class A-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) there shall be no enlargement or alteration, or detached buildings without the prior written approval of the Borough Council.*
  - The reason given for the condition is: *The development is of a nature whereby the future development of this type should be closely controlled and to comply with Policy 1 (Development Requirements) of the Rushcliffe Local Plan Part 2: Land and Planning Policies.*
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Condition 10 removes permitted development for any development within the curtilage of a dwellinghouse, Schedule 2, Part 1, Class A (the enlargement improvement or other alteration of a dwellinghouse); Class B (the enlargement of a dwellinghouse consisting of an addition or alteration to its roof; Class C (any other alteration to the roof of a dwellinghouse; Class D (the erection or construction of a porch outside any external door of a dwellinghouse); and Class E (the provision within the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.
3. The proposal is to construct the proposed dwelling without complying with Condition 10. The application is to remove the condition in its entirety. However, as part of this appeal, the appellant states a wish to remove permitted development under Class A only but retain permitted development rights for Classes B, C, D and E. He further states that he wishes to build a 3.5 metre x 5 metre shed or log store in the side garden; a low garden wall to separate his garden from the neighbouring property; a pergola; and solar panels and battery storage.

Furthermore, he has suggested an amended condition which would take away PD rights for rear extensions or rear outbuildings and retain the right to develop under Classes B, C and D and allow Class E development provided that any side positioned structures occupied no more than 5% of the curtilage.

4. I have considered this appeal on the basis of the removal of the condition as applied for but have taken into account the lesser requirement as put forward by the appellant.
5. The National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) sets out that conditions should satisfy five tests. They should be (1) necessary, (2) relevant to planning, (3) relevant to the development to be permitted, (4) enforceable, (5) precise, and (6) reasonable in all other respects. I have considered the appeal accordingly.

### **Main Issue**

6. The main issue is the effect that removing or varying the condition would have on future occupiers living conditions.

### **Reasons**

7. In refusing the application to carry out the development without complying with Condition 10, that is, effectively refusing to remove the condition, the Council make specific reference to Class A (extensions and alterations) and Class E (outbuildings). In particular, the Council are concerned that due to the size of the garden to the approved house, it is necessary to avoid development that would result in the loss of useable outdoor amenity space. Also, the effect of retaining permitted development rights would allow development that would result in an over-intensive form of development on the site.
8. Reference is made to a Beech tree and its root protection area. The appellant's view is that as it has now been removed, there is no need to restrict permitted development on this basis. The Council dispute that this was a determining factor in imposing the condition. In any event, the tree no longer exists.
9. The appeal site was a construction site at the time of my visit and the dwelling appears to be nearing completion. Solar panels have been installed in the roof facing the lane. I have no floor plans of the house but it is a substantial detached two storey dwelling referred to as having three bedrooms. The completed house would have a modest rear garden at a depth of about 8.3 metres. The total amenity space is referred to as being 113 square metres which includes the space at the side of the house. The appellant further states that with the addition of the front garden, this would be 168 square metres. The Council's SPD<sup>1</sup> recommends rear gardens to have a depth of 10 metres and provide 110 square metres for detached properties. The house just satisfies this latter requirement when taking into account the side space. The frontage is shown as being used for car parking on the submitted block plan.
10. Extending the house as permitted under Class A or constructing outbuildings under Class E would potentially lessen the amount of outdoor amenity space and therefore result in sub-standard space for the dwelling. I do not accept the appellants restriction suggested for Class E development as 5% seems an

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<sup>1</sup> Rushcliffe Residential Design Guide Supplementary Planning Document March 2009 (SPD).

arbitrary figure that I cannot justify. I therefore consider that it is necessary to ensure that any development that would fall under these classes would require full consideration. The condition in relation to these classes should therefore remain.

11. Classes B and C relate to alterations to the roof which could result in enlarging the size of the house. Given that the effect of imposing condition 10 is to avoid an over-intensive development on this plot of land, the condition is necessary in this regard to avoid an overly large dwelling on this restrictive site.
12. Class D relates to porches and although there are limitations regarding the size and location of a porch under Class D, this too would enlarge the house although to a lesser degree than the other classes of development. However, I note that the front of the property would be dominated by car parking with three cars shown on the block plan in front of the house. The elevations include a front timber porch although this had not been constructed at the time of my site visit, a larger porch here could erode the amenity/parking space at the front of the house. A porch elsewhere also could further intrude into amenity space. Although any loss of amenity space in this regard would be small, its impact would still be noticeable. I therefore consider that the restriction in relation to Classes B, C and D should also remain.
13. The applicant has explained his intentions for further additions which include a substantial shed/log store and a non-defined pergola, amongst other things. Retaining the condition does not remove the opportunity to apply for planning permission for these elements which would be capable of being considered based on precise details of their size, location and their impact.
14. I consider that the approved house provides for limited amenity space and the retention of condition 10 in its entirety is necessary to ensure that any further development would be properly assessed in order to ensure that adequate space was provided to safeguard the living conditions of future occupiers of the house.
15. I conclude that the consequences of removing or varying the condition would have a harmful effect on the living conditions of the future occupiers of the house. This would conflict with Local Plan<sup>2</sup> Policy 1(4) which seeks to ensure that the scale, density, height, massing, design, layout and materials should not, amongst other things, lead to an over intensive form of development. It would also be inconsistent with the Framework's aim to achieve well designed places (Section 12) and reflect local design policies (paragraph 139).

## Other Matters

16. The appellant points out the different styles and designs of houses in the area which demonstrates a lack of uniformity along Works Lane. There is also a factory nearby. He also states that the approved house is an improvement on what was previously a derelict and unused site. I note that the area is not a Conservation Area nor has it any other specific designation. However, these matters are not pertinent to my main issue. The design of the house and any improvements over what was here beforehand is not a determining factor on whether the condition should remain or not. Permission has already been granted for the dwelling so any improvements are achieved by the approved scheme.

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<sup>2</sup> Rushcliffe Borough Council – Rushcliffe Local Plan Part 2: Land and Planning Policies Adopted October 2019.

17. The appellant also states that the configuration of the plot limits the scope for extensions or alterations. However, this is exactly why the condition was imposed. The appellant considers that the condition significantly and unfairly impacts on his ability to make necessary and minor improvements to the property. However, the condition does not preclude any further development it simply requires the appellant to apply for planning permission. If the Council agree that any works would not risk overdevelopment then planning permission might be forthcoming. I accept that there would be financial and procedural burdens for any subsequent planning applications. These matters do not override my findings on my main issue.

### **Conclusion**

18. For the reasons given above the appeal should be dismissed.

*J D Clark*

INSPECTOR