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## Appeal Decision

Site visit made on 26 August 2016

**by Gareth W Thomas BSc(Hons), MSc(Dist), PgDip, MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 September 2016**

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**Appeal Ref: APP/L3245/W/16/3149972**

**Land adj. No.5 Hollins Lane, Tilstock, Shropshire SY13 3NT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of approval of Reserved Matters subject to conditions.
  - The appeal is made by Mr Gordon Daniec against the decision of Shropshire Council.
  - The application Ref 15/02438/REM, dated 1 June 2015, was approved on 3 December 2015 subject to conditions.
  - The development approved is for the erection of one dwelling; erection of detached double garage.
  - The condition in dispute is No.8 which states that: Notwithstanding the provisions of the Town and Country Planning (General permitted Development) Order 2015 or any other order revoking and re-enacting that Order with or without modification), no development relating to Schedule 2, Part 1 in its entirety, shall be erected, constructed or carried out.
  - The reason given for the condition is: To maintain the scale, appearance and character of the development and to safeguard residential and/or visual amenities.
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### Decision

1. The appeal is allowed and the approval Ref 15/02438/REM given to the details pursuant to condition No.1 of a planning permission Ref 11/03020/OUT given on 13 July 2012 is varied by deleting condition No.8.

### Background and Preliminary Matters

2. Outline planning permission for the renewal of outline planning permission Ref. 08/01322/OUT for the erection of one dwelling was granted on 13 July 2012 under Ref. 11/03020/OUT with matters of layout, scale, appearance, access and landscaping reserved. The application incorrectly refers to the earlier outline approval. It was also described as "Reserved Matters No's 1-6 inclusive". However, these were rectified in the appellant's appeal form which correctly refers to the later renewal of outline permission and describes the proposed development as Approval of Reserved Matters (access, appearance, landscaping and layout) pursuant to permission 11/03020/OUT for the erection of one dwelling; erection of detached double garage.
  3. The condition under dispute is Condition 8 attached to the Reserved Matters Approval. The Planning Practice Guidance concerning the Use of Planning Conditions explains that conditions relating to anything other than the matters to be reserved can only be imposed when outline planning permission is granted. The only conditions which can be imposed when the approved reserved matters are approved are conditions which directly relate to those reserved matters. Condition No.8 was not imposed in the outline permission.
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However, given that Condition No.8 has arisen directly from aspects of the Reserved Matters relating to the layout and design of the dwelling, I am satisfied that the Council had the ability to impose such a condition and that it did not materially derogate from the outline permission.

4. The effect of Condition No.8 would be to withdraw permitted development rights in respect of the enlargement, improvement or other alteration of the dwelling as defined in Class A to Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).

### **Main Issue**

5. Whether there are any exceptional circumstances which would justify the restriction of permitted development (PD) rights as detailed in Condition 8.

### **Reasons**

6. The appeal site is located off an unmade track leading between two properties fronting Hollins Lane that is also a Restricted Byway and opposite an existing two storey dwelling. The site lies within the village; beyond is open countryside. The approved details show a 3-bed single storey dwelling with a detached double garage to its eastern side.
7. The Council explained in the officer report on the Reserved Matters application that, given the location of the dwelling, it would be appropriate to withdraw permitted development rights which "will ensure that the Council has control over any future development on site". That said, the officer report also concluded that the plot was considered large enough, with correct orientation and offsetting of the proposed dwelling for there to be minimal loss of residential amenities in terms of "overlooking, noise disturbance or loss of privacy".
8. Although the Council has included relevant planning policies in its statement, including Shropshire Core Strategy (CS) Policies CS6, MD2 and Part 7, it seems to me that these policies have greater relevance to the design of new development, which should take account of local character and be of appropriate scale, density, pattern and design. Further, it is explained in the Type and Affordability of Housing Supplementary Planning Document (SPD) that, while there will be a need for the efficient use of land, it is also important to maintain acceptable living conditions for occupiers through avoidance of cramped developments. These matters appear to have been taken into account when the Application for Reserved Matters was considered albeit on the basis that permitted development rights should be removed.
9. The PPG concerning the use of conditions advises that conditions restricting PD rights should only be imposed in exceptional circumstances. The scope of such a condition needs to be precisely defined so that it is clear exactly what rights have been limited or withdrawn. Blanket removal of freedoms to carry out small scale domestic alterations that would otherwise be permitted are unlikely to meet the tests of reasonableness and necessity.
10. The Council believes that exceptional circumstances exist that would justify the removal of PD rights across the spectrum of Class A to Part 1 of Schedule 2 of the GPDO. In particular, the Council is concerned that the built development on this plot would leave just over 205m<sup>2</sup>, or about a third of the plot, as private garden area, which under permitted development rights, could be substantially

built upon by way of extensions and other ancillary buildings. Moreover, it is considered that the development should be retained as a simple single storey format to protect the amenities of existing properties.

11. However, the development proposed is similar to other developments in the village and some of these have seen a wide range of extensions, alterations and domestic buildings within gardens of similar size and proportions. Given the satisfactory relationship of the proposed bungalow and garage to existing neighbouring dwellings, as confirmed by the Council, I do not consider there to be any planning justification for restricting the ability of occupiers of this plot to undertake minor alterations and additions. Unlike densely developed urban situations and despite the somewhat narrow depth here, this plot is relatively generous in size and one third of the area devoted to garden space is reasonable and fairly typical of other plots in the village. The appeal site is also located on the edge of the countryside, beyond which are open fields connected by public rights of way.
12. I therefore find that there are no exceptional circumstances to justify the imposition of Condition No.8, which is unreasonable and not necessary. Moreover, removing this condition would not in my view conflict with CS Policies CS6 and MD2 or with the guidance contained within the SPD.

#### Conditions

13. I have noted that the Council requested in the event of the appeal being allowed that the conditions imposed by the Council on the Reserved Matters Approval be reinstated in a new Approval. However, all I am doing in this appeal is to vary the extant Approval of Reserved Matters Ref 15/02438/REM by deleting Condition 8. All other conditions imposed on the Approval of Reserved Matters remain unchanged. The Council has also suggested, in the event of this appeal being allowed that condition No.8 be modified and a replacement condition is imposed that would withdraw PD rights in relation to Class A, B, C, E and F of Schedule 2, Part 1 of the GPDO. However, for the same substantive reasons as I have given above, I would find this restriction both unreasonable and unnecessary.

#### Other matters

14. Local residents have commented on the suitability and the legal ability to utilise the public byway to access the site. These matters were raised at the time of the planning application and were deemed not to impact on the Council's abilities to grant outline planning permission and Reserved Matters Approval. Such matters do not influence the single faceted issue that is before me.

#### **Conclusion**

15. For the above reasons and having regard to all other matters raised, I conclude that the appeal should succeed. I will vary the Reserved Matters Approval by deleting the disputed condition, No.8.

*Gareth W Thomas*

INSPECTOR