



Appeal Decision

Site visit made on 16 January 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2023

Appeal Ref: APP/L3245/D/22/3305460

Eaton House, Eaton Constantine, Shrewsbury, Shropshire SY5 6RF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs M Budgen against the decision of Shropshire Council.
 - The application Ref 22/02113/VAR, dated 3 May 2022, was refused by notice dated 14 July 2022.
 - The application sought planning permission for the change of use from agricultural land to residential use and change in ground levels without complying with conditions attached to planning permission Ref 21/03663/FUL, dated 17 February 2022.
 - The conditions in dispute are Nos 3, 6 and 7. Condition 3 states that: *"The area shaded purple on approved plan SA-40168-BRY-00-PL-A-100K shall be reprofiled as indicated within 6 months of the date of this planning permission. The area shaded orange shall be planted with a mix of native species wildflowers and the existing hardstanding removed within the first planting season following the date of this planning permission"*. Condition 6 states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the following development shall not be undertaken: freestanding buildings or containers; new fences, gates or walls; hard surfaces; new accesses from a highway; use of land as a caravan site; stand alone solar equipment or wind turbines"*. Condition 7 states that: *"Notwithstanding any landscaping and planting indicated on approved plan SA40168- BRY-00-PL-A-100-K there will be no vehicular access between the residential land and the area to be planted with wildflowers indicated in the area shaded orange or between the residential land and the area retained in agricultural use. The existing hardstanding within the area shaded orange on the approved plan will be removed and planted with wildflowers within the first planting season following the grant of this permission"*.
 - The reasons given for the conditions are: *"This planning permission is granted on the basis that the existing unauthorised development is altered in accordance with the approved plans in order to protect residential amenity and to ensure visual amenity and the rural landscape" (condition 3), "To maintain the scale, appearance and character of the development and to protect the rural character and visual amenity" (condition 6), and To ensure biodiversity is enhanced and hard landscaping mitigated by the planting and upkeep of the wildflower area, to protect residential amenity from noise disturbance, to protect against highway safety issues arising from any consequent use of the existing residential access for agricultural vehicles" (condition 7).*
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use from agricultural land to residential use and change in ground levels at Eaton House, Shrewsbury SY5 6RF, in accordance with plans SA40168-BRY-00-PL-A-0001-B and SA40188-BRY-00_PL-A-100-_K and the application ref 22/02113/VAR made 4 May 2022 without complying with conditions No 3, 6

and 7 set out in planning permission Ref 21/03663/FUL, granted 17 February 2022 by Shropshire Council, but otherwise subject to the following conditions:

- 1) Within 3 months of the grant of this planning permission, the makes, models and locations of bat and bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The following boxes shall be erected on the site: a minimum of 2 external woodcrete bat boxes or integrated bat bricks, suitable for nursery or summer roosting for small crevice dwelling bat species and; a minimum of two artificial nests, of either integrated brick design or external box design, suitable for sparrows (32mm hole, terrace design), starlings (42mm hole, starling specific), swifts (swift bricks or boxes) and/or house martins (house martin nesting cups). The boxes shall be sited in suitable locations, with a clear flight path and where they will be unaffected by artificial lighting. The boxes shall thereafter be maintained for the lifetime of the development.
- 2) The development permitted here shall only be used as an integral part and incidental to the enjoyment of the existing dwelling known as Eaton House and shall not at any time be sold, let or occupied as a separate unit or used for commercial or business purposes.

Preliminary Matters

2. The Council has stated that the approved site plan reference SA40168-BRY-00-PL-A-100-E, within the decision notice, was a previous and superseded version of the site plan. This decision instead should have referred to plan reference SA40168-BRY-OO-PL-A-0001-B. The alternative plan shows the extent of both the redlined site and agricultural land within the applicant's ownership and is not materially different to the previous plan. I have therefore accepted the alternative plan without causing prejudice to any party.
3. The change of use has commenced, and the plot has been subdivided from the surrounding agricultural land by a post and rail fence.

Main Issue

4. The main issue is whether the disputed conditions are necessary and reasonable to protect the living conditions of the nearest residential occupiers from overlooking, the rural character of the area and highway safety.

Reasons

5. The appeal dwelling is a large traditional building that stands close to the highway. Its rear garden slopes gradually from the highway down to its lowest point adjacent to the site's rear boundary. The rear boundary is marked by a post and rail fence. The site is open to views of the countryside to the rear. However, the site is close to other residential plots and built form and is not unduly prominent within the wider rural landscape.
6. The area marked in purple is within the southwest corner of the rear garden. It follows the gradual slope of the garden. It appears to have been reprofiled in accordance with the requirements of condition 3 and enables this part of the garden to blend in with the surrounding rural landscape.
7. The orange area, as indicated on the approved plan, includes a short gravel track and grass areas. It is beyond a post and rail fence enclosure that defines

the rear and side boundary of the residential property. This area was partly being used to store trailers at the time of my visit, it has not been planted as a wildflower garden as required by condition 3.

Condition 3

8. The topographical plan submitted with the original submission shows that the purple area was raised in comparison to the local slope of surrounding land. This appears to have since been reprofiled and would no longer provide an adverse impact on the privacy of neighbouring occupiers. This therefore meets the first part of this condition. The second part of the condition requires the orange area to be planted with a wildflower meadow. However, whilst a wildflower garden would add bio-diversity interest to the site, I am unconvinced that this would be an essential requirement to off-set other areas of hardstanding proposed as part of the proposal.
9. Furthermore, a wildflower garden would not be necessary to protect the visual amenity of the 'orange area' or the surrounding rural landscape. Although the Council has sought the removal of the hardstanding through this area, this forms only a small proportion of the parcel and has only a limited effect on its rural character. Whilst recognising that the wildflower garden was proposed by the Appellant, this alone would not establish a clear need for it to be required by condition. As such, the first part of the condition is no longer necessary, and the second part would not pass the tests of the National Planning Policy Framework as being reasonable or necessary.

Condition 6

10. Condition 6 removes a broad range of Permitted Development (PD) rights. These rights are conveyed by the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). Schedule 2, Part 1, of the GPDO relates to development within the curtilage of a dwellinghouse. The condition would prevent the Appellants' rights associated with Class E for outbuildings and Class F for hardstanding. Schedule 2, Part 2, 'minor operations' relates to the erection of gates, fences and walls. PD rights, associated with renewable energy, including solar equipment and wind turbines, are regulated by Schedule 2, Part 14 (classes A, B and H) of the GPDO.
11. The Framework advises that PD rights should not be removed unless there is clear justification to do so. It is unconvincing that the implementation of development under the referenced PD rights would affect the existing pattern of development. The PD right provisions include a number of limitations that would guard against harm occurring to the rural character of the area. Furthermore, the garden is relatively well enclosed to its sides. Whilst views of the site are open from the surrounding countryside, any PD works would be read in the context of existing built form. Accordingly, PD works could be accommodated within the site without causing undue adverse effects on the open rural character of the area.
12. Moreover, the Council has not explained what it means by a 'caravan site'. However, to use the appeal site as a commercial 'caravan site' would be unlikely to be incidental to the enjoyment of the dwellinghouse and would require specific planning permission. Accordingly, it would be unnecessary to remove such a right by condition.

Condition 7

13. The approved residential plot shares its northwest boundary with the highway. This boundary includes the sole vehicular access into the site from the main road. The location plan shows that the agricultural holding, to the rear of the application site, shares a boundary with Garmston Lane. This includes a field access into the Appellant's agricultural land.
14. It seems likely that most agricultural vehicles would enter the field from Garmstone Lane. The agricultural unit would be unlikely to require large vehicles or many vehicles. Furthermore, the access onto the main road is a good standard and provides clear visibility. Accordingly, any agricultural vehicles taken through the residential plot would be likely to be infrequent and would not harm highway safety.
15. The appeal site and its neighbouring residential plots are adjacent to agricultural land. Occupiers of residential plots within this rural location would expect to hear agricultural vehicles and activity from time to time. If agricultural vehicles were to pass through the appeal site, there is no clear reason to demonstrate why this would harm neighbour's living conditions. Consequently, a condition to prevent agricultural access through the site would be unnecessary and unreasonable.

Conditions

16. The advice in the Planning Practice Guidance makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have only limited information before me about the status of the other conditions imposed on the original planning permission (21/03663/FUL), I shall impose them. I have not included the previous conditions 1 and 2 as these relate to the commencement period and the implementation of the development to be in accordance with the approved plans.
17. The requirements of condition 3 relate to works that have been completed or are not necessary. As such this condition no longer serves a useful purpose and has not been imposed.
18. I have reinstated and renumbered conditions 4 and 5. In the event that the originally numbered condition 4 has in fact been discharged, this is a matter which can be addressed by the parties. The originally numbered condition 5 remains necessary to prevent the extended garden becoming subdivided from the main site in the interests of its open countryside character.

Conclusion

19. For the reasons given above, I conclude that the appeal should be allowed, subject to the attached conditions.

Ben Plenty

INSPECTOR