



Appeal Decision

by Paul Selby BEng (Hons) MSc MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 08/09/2023

Appeal reference: CAS-02439-F3D8N4

Site address: 1 Smithy Cottage, Crossways, Newcastle, Monmouthshire NP25 5NW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ms Katharine Owens against the decision of Monmouthshire County Council.
 - The application Ref DM/2021/00908, dated 5 June 2021, was approved on 29 July 2022 and planning permission was granted subject to conditions.
 - The development permitted is described as ‘Retrospective application for change of use from agricultural land to garden and retention of levelled area in situ’.
 - The condition in dispute is No 6 which states that: “No touring caravan(s), static caravan(s), mobile home(s) or motor vehicle(s) shall be sited or stored in the extended residential curtilage hereby approved”.
 - The reason given for the condition is: “In the interests of visual amenity and to safeguard the appearance of the area and to ensure compliance with LDP Policies DES1 and LC5”.
 - A site visit was made on 22 August 2023.
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Decision

1. The appeal is allowed and the planning permission Ref DM/2021/00908 for Retrospective application for change of use from agricultural land to garden and levelled area at 1 Smithy Cottage, Crossways, Newcastle, Monmouthshire NP25 5NW granted on 29 July 2022 by Monmouthshire County Council, is varied by amending condition nos. 1, 4 and 5, and deleting condition no 6, as set out in the schedule to this decision letter.

Procedural Matters

2. Notwithstanding the information given on the application form, I have taken the description of development from the Council’s Decision Notice, which is more accurate; albeit since ‘retention’ is not a form of development I have removed reference to this. As the development has been completed, retrospective planning permission is sought, and I have determined the appeal on this basis.
3. The red line boundary for the appeal site differs between the approved Block Plan and Location Plan. The site shown on the approved Location Plan includes a side and rear access track, and a strip of land which during my site visit was occupied by parked vehicles and caravans, amongst other items. The parties have confirmed that this larger site boundary is derived from the land title plan, whereas the change of use sought relates to the smaller site area shown on the ‘Block Plan’ and in the other submitted documents. This decision therefore relates to the boundary shown on the Block Plan.

Main Issue

4. The main issue is whether the disputed condition is reasonable and necessary to preserve the special interest of the registered park and garden of Hilston Park and the setting of associated listed buildings; and to safeguard the character and appearance of the area.

Reasons

5. The appeal site lies within the open countryside adjacent to a small cluster of dwellings. The land subject to the planning permission is to the south of two adjoining dwellings of modest rural character and extends the existing rear garden of one of these properties. Since February 2022 the appeal site has been included within the boundary of Hilston Park, a registered park and garden which also accommodates two listed buildings.
6. The site rises gently from south to north but features a levelled area in the central northern section. At the time of my visit the site mainly comprised lawns, grassland and scrub, deciduous and evergreen trees, ancillary structures and a caravan. The western and southern boundaries are marked by mature hedgerows and a post and wire fence. The east of the site is bounded by trees and a hedgerow, albeit this is fragmented adjacent to the neighbouring residential property of 'Laun and Deri Cottage'.
7. Both Cadw and the Council have found the development to be acceptable in principle due to factors such as the site's historic use as an orchard, its position within a natural dip in the landform, and the extent to which hedgerows screen and separate the site from the open fields which comprise much of the registered park and garden. Cadw does not object to the development's effect on the setting of nearby listed buildings, including from the scale of the extended curtilage relative to the dwelling. Having regard to the circumstances of the case, including the site's siting and location to the dwelling's rear, its continued association with the nearby cluster of dwellings and its containment by established field boundaries, I have no reason to find otherwise. I agree, however, that the removal of permitted development rights for the erection of permanent structures, and the implementation of a scheme of landscaping, is necessary to ensure that the site retains a predominantly open and natural appearance which is sympathetic to the setting. Securing such via conditions would preserve the special interest of Hilston Park, the setting of listed buildings and the area's rural character and appearance.
8. Notwithstanding this, whilst the extended garden is extensive and unlikely to be regularly occupied, the change of use represents a material intensification of the land relative to its previous use as an agricultural field, through which no public rights of way run. Although noise and disturbance arising from the site's use as a garden would not be of a nature or magnitude which would be intrusive to neighbouring residents, I saw on my site visit that the direct and close-range views available into windows serving Laun and Deri Cottage, which sits at a lower level to the appeal site, would unacceptably reduce neighbouring occupants' privacy levels, contrary to policy DES1 of the Monmouthshire Local Development Plan (LDP). I am satisfied, however, that securing natural boundary screening near to the shared boundary would satisfactorily mitigate this harm whilst retaining an acceptable outlook for neighbouring occupants. I have therefore imposed amended versions of condition nos. 4 and 5 to ensure that the agreed scheme of landscaping addresses this adverse impact and is implemented in a timely manner, whilst also securing biodiversity enhancement as required by policy 9 of Future Wales.
9. The disputed condition, no 6, seeks to prohibit touring or static caravans, mobile homes and motor vehicles from being sited or stored on the site. It is generally accepted that the parking or positioning of vehicles or caravans within a residential curtilage is excluded from the definition of development if it is incidental to the enjoyment of a dwellinghouse.

Whether or not that is the case is a matter of judgment relating to factors including the actual or potential nature of the use.

10. Welsh Government Circular 016/2014 'The Use of Planning Conditions for Development Management' ('the Circular'), which forms part of the national planning policy framework, notes that conditions are sometimes imposed to restrict incidental activities. Nonetheless, the development is clearly described as a change of use to a garden with an area of levelled land. Any storage of vehicles, caravans or mobile homes, so far as that was incidental to the residential use for which planning permission is sought, would not be so visually incongruous as to affect the special interest of Hilston Park, the setting of listed buildings or the area's character and appearance, and so would accord with the relevant policies of the LDP. As planning decisions generally run with the land, this view is reached based solely on the boundary and characteristics of the appeal site and is not influenced by the appearance of other land within the appellant's ownership.
11. I have found the development to be acceptable, subject to conditions, and the use has already commenced. Consequently, a reversion to agricultural land does not seem a plausible 'fall back' position and I afford little weight to the appellant's arguments in this regard. Were vehicles, caravans or mobile homes to be kept within the permitted garden in such numbers or in a manner which would stray beyond being incidental to the enjoyment of the dwellinghouse, planning permission would be required. Consequently, condition no 6 is not necessary in the interests of visual amenity or to safeguard the appearance of the area. It is therefore contrary to the Circular as it is not fairly and reasonably related to the permitted development. Accordingly, I shall delete it.

Other Matters and Conclusion

12. Various allegations have been made against the appellant, but these are not relevant planning considerations and I afford them little weight. Irrespective of the fact that the development has already taken place, it is incumbent on me to determine the appeal based on its merits. Whilst the development would result in the permanent loss of land in agricultural use, this would not be of such significance as to justify withholding planning permission.
13. I have considered all other matters raised, but these do not alter my decision. I therefore conclude that the appeal should be allowed. For the reasons given, I shall vary the planning permission by deleting the disputed condition no 6, and imposing new versions of condition nos. 1, 4 and 5.
14. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards one or more of the Welsh Ministers' well-being objectives.

Paul Selby

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development shall be carried out in accordance with the following approved plans: Block Plan; Landscaping Plan (dated 21/03/2022); Details – Meadow Seed Mix (dated 21/03/2022).

Reason: To ensure the development is carried out in accordance with the approved drawings.

- 4) The use of land as garden curtilage hereby permitted shall cease within 3 months if any one of the requirements set out in (i) to (iv) below are not achieved:
- i. within 3 months of the date of this decision, a scheme of landscaping and biodiversity enhancement shall be submitted for the written approval of the local planning authority, and the scheme shall include a timetable for its implementation;
 - ii. if within 6 months of the date of the submission to the Local Planning Authority (LPA) under (i) the submitted scheme of landscaping and biodiversity enhancement is refused or the LPA fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Welsh Ministers;
 - iii. if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme of landscaping and biodiversity enhancement shall have been approved by the Welsh Ministers; and
 - iv. the approved scheme of landscaping and biodiversity enhancement shall have been carried out and completed in accordance with the approved timetable.

Reason: To preserve historic assets and the area's character and appearance; to maintain and enhance biodiversity; and to safeguard the privacy of neighbouring occupants, in accordance with LDP policies LC5, DES1, S13, and G11 and NE1, and Future Wales Policy 9.

- 5) All planting, seeding or turfing comprised in the scheme of landscaping and biodiversity enhancement shall be carried out in accordance with the approved details and in accordance with the approved Landscaping Plan (dated 21/03/2022) and Details – Meadow Seed Mix (dated 21/03/2022), and shall be carried out in the first planting and seeding seasons following approval. Any trees or plants which, within a period of 5 years from the approval of the scheme of landscaping and biodiversity enhancement, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: To preserve historic assets and the area's character and appearance; to maintain and enhance biodiversity; and to safeguard the privacy of neighbouring occupants, in accordance with LDP policies LC5, DES1, S13, and G11 and NE1, and Future Wales Policy 9.