Planning Inspectorate

# Appeal Decision

Site visit made on 9 April 2025


**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**



**Decision date: 22 April 2025**


**Appeal Ref: APP/Z3825/W/24/3355683**
**Newlands, Frylands Lane, Wineham, West Sussex BN5 9BS**

- 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 a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr Steven Wassenaar against the decision of Horsham District Council.
- The application Ref is DC/24/1150.
- The application sought planning permission for demolition of existing storage annex, erection of a single storey side extension to west elevation. Loft conversion with installation of dormer windows to existing roof. Erection of a two-storey extension to east elevation and a two-storey link and change of use to extend the residential curtilage without complying with a condition attached to planning permission Ref DC/21/1986 dated 7 January 2022.
- The condition in dispute is No 5 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (and/or any Order revoking and/or re-enacting that Order) no development falling within Class E or F of Part 1, or Class A of Part 2 within Schedule 2 of the order shall be erected, constructed or placed within the curtilage of the development hereby permitted without express planning consent from the Local Planning Authority first being obtained.
- The reason given for the condition is: In the interest of visual amenity and due to the location and constraints of the site in accordance with Policies 28 and 33 of the Horsham District Planning Framework (2015).

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Following the refusal of the application and the submission of the appeal, the revised *National Planning Policy Framework* (the Framework) was published on 12 December 2024. I have had regard to the latest version in reaching my decision. Whilst paragraph numbers have changed, the policies of the Framework most relevant to the appeal have not altered so substantially as to affect the matters raised by the main parties. Therefore, there is no requirement for me to seek their views on this matter, and I am satisfied that this approach would not prejudice any party's interests.

3. The Council's description of development on the decision notice and the officer's delegated report are both incomplete in that they do not include a full reference to the relevant provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) to which condition 5 relates. For the avoidance of doubt, I have determined this appeal based on the full wording of condition 5, as detailed in the banner heading above.

## Background

4. The appeal site lies outside the designated settlement boundary in open countryside to the east of Shermanbury and south of Frylands Lane, from which it obtains vehicular access.

5. The area has a predominantly rural character within which there are sporadically located detached dwellings, which mainly comprise large properties set within generous plots.

6. The appeal site is occupied by a two-storey detached house which is positioned close to the northern site boundary and sits within a substantial plot which extends south and south-westwards away from the house. Much of the garden is taken up by a large pond. Mature trees feature along the west, south and east boundaries linking into Stone Croft Wood which extends eastwards from the site.

7. Mill Stream runs close to the southern site boundary and beyond this, separated by intervening open land is the River Adur. There is a neighbouring detached dwelling to the north of the site and a bridleway/private lane runs parallel to the western site boundary, from which there is another vehicular access to the appeal site.

8. The existing dwelling results from the implementation of planning permission Ref DC/21/1986 granted in January 2022, as amended by permission Ref DC/23/1619[1]. The approved development resulted in a significant expansion of the original dwelling by means of the works described in the banner heading above.

9. Condition 5 of DC/21/1986 removes permitted development rights for development comprising 'buildings etc incidental to the enjoyment of a dwellinghouse' (Class E of Schedule 2 Part 1 of the GPDO, 'hard surfaces incidental to the enjoyment of a dwellinghouse' (Class F of Schedule 2 Part 1 of the GPDO) and 'gates, fences, walls etc' (Class A of Schedule 2 Part 2 of the GPDO).

10. A swimming pool, pool house detached garage and plant room have been subsequently added to the property under planning consent Ref DC/23/0346[2], an application which was required due to the imposition of condition 5.

## Main Issues

11. The Council's reason for imposing condition 5 of planning permission Ref DC/21/1986, as stated on the decision notice, specifically refers to the condition being 'in the interest of visual amenity' and due to the location and constraints of the site in accordance with Policies 28 and 33 of the *Horsham District Planning Framework (excluding South Downs National Park)* (November 2015) (the HDPF*).*

12. The supporting paragraph to Policy 28 states that this policy seeks to ensure that replacement dwellings, house extensions, outbuildings and ancillary accommodation within the countryside outside the defined built-up areas are of an appropriate scale, siting and design and have due regard to the countryside setting and the existing dwelling and be accommodated appropriately within the curtilage of the existing dwelling. The preceding paragraph to Policy 33 states that this is a

[1] Granted 19 June 2024
[2] Granted 9 August 2023

design policy which seeks to ensure that all new development is of a high quality, well-designed and takes account of the existing character of the area to conserve and enhance the natural and built environment.

13. Moreover, the Council's reason for refusal in respect of the proposed removal of condition 5 includes concerns that this would enable works to take place within an area covered by a Tree Preservation Order without allowing due consideration of impacts upon protected trees.

14. With all of the above in mind, I find that the first main issue is whether condition 5 is reasonable and necessary in the interests of the character and appearance of the site and the surrounding area.

15. The Council's reason for refusal as stated on the decision notice and confirmed within the officer's delegated report, raises additional matters in respect of the proposal enabling a circumvention of critical safeguards by allowing the potential for development to take place within flood risk zones 2 and 3 and within a red impact risk zone in respect of great crested newts.

16. Accordingly, as I must determine this appeal considering the current situation, I find that there are two additional main issues to consider. These are whether condition 5 is reasonable and necessary in the interests of: a) flood risk; and b) impacts upon protected species.

## Reasons

*Character and appearance*

17. The Planning Practice Guidance (the PPG) advises that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. It states that where conditions are used to restrict future use of permitted development rights, the scope of such conditions needs to be precisely defined by reference to the relevant provisions in the GPDO. This is to provide clarity on exactly which rights have been limited or withdrawn. Moreover, the PPG confirms that the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.

18. Paragraph 56 of the Framework states that 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. Moreover, paragraph 55 states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so.

19. Planning permission DC/21/1986 allowed a significant extension of the original dwelling's curtilage south and south-westwards into undeveloped open countryside away from the core group of buildings sited off Frylands Lane, associated with the appeal dwelling and the closely located neighbouring dwelling to the north of the appeal site.

20. I saw on my site visit that the area of the extended curtilage has a notably rural undeveloped soft-landscaped and tranquil character, in contrast to the more intensively built-up environs including and immediately surrounding the two dwellings.

21. A large proportion of the extended curtilage land is occupied by a substantial pond and there is a significant amount of mature tree coverage around the west, south and east boundaries, giving the land a rural wooded setting and making a positive contribution to the character and appearance of the appeal site and the wider area.

22. Notwithstanding a difference of opinion on this matter between the main parties, a comparison of the Council's TPO map[3] with the site location plan drawing Ref PL.001D approved under permission DC/21/1986 confirms that the Stone Croft Wood TPO covers most of the area of the approved extended residential curtilage. Moreover, the southern part of the site leads directly into wider undeveloped open countryside including the Mill Stream and open fields and the River Adur beyond.

23. As such, whilst additional future built development within the grounds of the extended residential curtilage may not be highly visible in wider public views, such development, if uncontrolled, could potentially significantly harm the intrinsic rural nature of this part of the site, which forms a natural undeveloped transition between the main dwelling and its complex of buildings and the wider open countryside beyond.

24. I acknowledge that the approved use of the land in connection with the residential occupation of the dwelling has resulted in an intensification of noise and activity within this part of the appeal site. However, having regard to the countryside location of the appeal site and the position of the extended part of the residential curtilage well away from Frylands Lane, I consider that it is reasonable to retain control over further built development in this part of the appeal site to prevent a sprawl of built development into this area to preserve its inherently rural character.

25. I accept that the GPDO sets out a range of restrictions on permitted outbuilding height and the extent of ground covered by outbuildings and hard standings. However, in this instance the large size of the approved additional residential curtilage and its position away from the public highway would mean that there would nonetheless be potential for a considerable amount of such built development to take place as permitted development within the expanded residential curtilage.

26. Notably, rather than imposing a blanket restriction of permitted development under Part 1 of Schedule 2 of the GPDO, the Council has only restricted permitted development under Classes E and F of this part of the GPDO, thereby allowing permitted development in relation to various types of enlargements, improvements and other alterations to the dwellinghouse itself.

27. I find this to be a reasonable and considered restriction of permitted development rights, which would target the potential future proliferation of uncontrolled built development encroaching into the approved extended residential curtilage area.

28. Condition 5 also removes permitted development rights relating to the erection of gates, walls fences and other means of enclosure. I also find this to be justified in the interests of protecting the rural character of the site, where natural vegetated boundaries are appropriate, and the introduction of hard boundary treatments could materially harm the character and appearance of this part of the countryside.

[3] Stone Croft Wood - Mixed Woodland TPO/1553

29. This is particularly pertinent given the large extent of the boundary around the extended curtilage, so that potentially any new means of enclosure of this land could be extensive in length, as well as being visible in wider views from the more open land to the south.

30. As such, noting all of the above, and notwithstanding that the site does not lie within a designated landscape designation such as a National Park or National Landscape, I find that, in the interests of preserving the character and appearance of this part of the countryside, the permitted development restrictions of condition 5 have reasonably formed part of the justification for allowing such an extensive expansion of residential curtilage into this part of the undeveloped countryside.

31. I accept that the authority's consent is required for work on trees protected by a TPO that is necessary to implement permitted development rights under the GPDO. However, the onus would be on the landowner to apply for the tree works under a separate process instead of the more rigorous approach of considering the tree protection implications up-front as part of the determination of a planning application for such works.

32. In this instance, the removal of condition 5 would potentially enable a considerable amount of permitted development works to take place within the area covered by the TPO given the extensive increase in curtilage size that has been approved and the large amount of this land which is covered by protected trees. As such, I find the latter approach of considering tree impacts through the determination of a planning application to be more appropriate in this instance in order to provide sufficient assurance that any impacts upon protected trees would be robustly considered prior to the construction of outbuildings, hard surfacing or boundary treatment works.

33. For the above reasons, I therefore conclude that condition 5 is reasonable and necessary in the interests of the character and appearance of the site and the surrounding area. This accords with the aforesaid objectives of HDPF Policies 28 and 33 of protecting the character of the countryside and achieving high-quality design.

*Flood risk and impacts upon protected species*

34. I have not been provided with sufficient cogent evidence to satisfactorily address the matters of flood risk and protected species impacts as further justification for the retention of condition 5. However, my conclusion in respect of the first main issue is determinative to the outcome of this appeal as it means that condition 5 should be retained. Therefore, it is not necessary for me to go back to the main parties and seek further information to enable me to consider these matters further since this would not alter my overall decision.

## Other Matters

35. The appellant has drawn my attention to 3 other recent planning approvals[4] for alterations and extensions to residential properties nearby within Frylands Lane and Wineham Lane which were not subject to conditions removing permitted development rights. Based on the information before me, a notable difference between the descriptions of the developments referred to and that of the appeal

[4] LPA Refs DC/23/1920, DC/23/2125 and DC/22/1955

scheme is that they do not appear to include extensions to the residential curtilages of the properties concerned.

36. Notwithstanding this, I have not been provided with the full details of these permissions including plans showing the location and size of the sites and their juxtaposition to surrounding built development, drawings of the approved developments, and relevant planning history of each site prior to the permissions being granted.

37. As such, there is insufficient evidence to enable me to conclude that these schemes are directly comparable with the appeal scheme. In any event, I must determine the appeal based on the particular circumstances of the appeal site and its surroundings and on the merits of the proposal before me.

**Conclusion**

38. For the reasons outlined above, I conclude that condition 5 of DC/21/1986 is reasonable and necessary. In this case, there is clear justification for retaining the condition as worded. Therefore, the appeal should be dismissed.

*S Leonard*

INSPECTOR