
REVIEW REQUEST 18/0002/LRB

PLANNING PERMISSION 17/00666/PP

**ERECTION OF DWELLINGHOUSE, INSTALLATION OF SEPTIC TANK AND
FORMATION OF VEHICULAR ACCESS.**

LAND 169M WEST OF SHORE COTTAGE, STONEFIELD, TARBERT

COMMENTS ON MATTERS ARISING ON BEHALF OF PLANNING HOUSING AND
REGULATORY SERVICES

BACKGROUND

This appeal is in respect of the imposition of a planning condition restricting householder 'permitted development' on the grant of planning permission for a new dwelling. The considerations leading to that approval are set out in the officers' Report of Handling on planning application 17/00666/PP. The appellant seeks deletion of condition 4 of this permission on the grounds that firstly the Council does not have the authority to remove 'permitted development' rights conferred by national regulation, and that secondly, the decision to remove such rights was in any event unwarranted in the circumstances of this case.

In determining this appeal it is important to note that it requires a *de novo* reconsideration of the merits of the case by the Review Body. In other words, consideration is not confined to the merits of the condition which is the subject of the appeal, and a decision should be reached as if the application had been made to the Review Body in the first instance. It would be open to the Review Body to come to an alternative decision as to the acceptability of the development, to substitute alternative conditions, or indeed to refuse planning permission.

This site was the subject of a planning permission in principle for one dwelling granted in 2012 and renewed in 2015. Those permissions in principle were subject to a number of conditions including a requirement that the floor area be limited to 140 square metres in line with an illustrative layout accompanying the applications. In the event, those permissions were not followed up with any subsequent application(s) for Approval of Matters Specified in Condition (AMSC) so the current proposal represented a fresh start with a detailed application for planning permission. The previous permissions do however represent material considerations in the adjudication of this further application.

The house for which permission has been sought is considerably larger than that envisaged at the time of the earlier permissions. In the event, upon assessment of the details in the course of the consideration of the application, it was concluded that the proposal was on balance acceptable, but that it might present issues if it were to be extended, or ancillary buildings were to be added to it, in an unsympathetic manner relative to its surroundings. For that reason, a condition was imposed limiting the effect of householder 'permitted development' rights which would have otherwise been available to the occupiers.

THE IMPOSITION OF PLANNING CONDITIONS

Section 37(1) of the Planning Act enables the planning authority to grant planning permission 'either unconditionally or subject to such conditions as they think fit'. Government Circular 4/1998 'The Use of Conditions in Planning Permissions' sets out the 'six tests' applicable to the imposition of planning conditions, which stem from the effect of case law in this matter. It is the opinion of officers that the condition at issue is warranted in the circumstances of the case, and that it satisfies all of the 'six tests' and has therefore been legitimately imposed.

It is appropriate to consider in turn the effect of each of the 'six tests' in the context of this appeal:

Need for a condition – There should be sound land use planning reasons for the imposition of any condition and a planning authority is obliged to state the reason for the imposition of any condition, as required by Article 22 (1)(a) of the General Development Procedure (Scotland) Order 1992. In this case the stated condition for Condition 4 was as follows:

Reason: To protect the sensitive area and the setting of the proposed dwellinghouse, in the interest of visual amenity, from unsympathetic siting and design of developments otherwise capable of being carried out without planning permission; these normally being permitted under Article 2(4) of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as amended).

This refers to the location of the building having a setting within a sensitive area. This is derived from its intended location within the ambit of the designated Stonefield Designed Landscape. Local Development Plan Supplementary Guidance SG LDP ENV 15 applicable to Historic Gardens and Designed Landscapes requires that in decision making 'adequate measures should be taken to preserve and enhance the special interest of the asset'. Although the building is considered to be in a less sensitive part of that landscape, removed from the immediate environs of Stonefield Castle, nonetheless it lies within the wider designation.

The scale of the development and the design of the building as submitted was on balance considered appropriate in the location proposed, for the reasons given in the Report of Handling. However, it was considered prudent to afford continuing control over alterations to that building and the addition of ancillary structures, in order to assure this in the longer term by the removal of certain 'permitted development' rights otherwise available to householders. The imposition of such a condition does not suggest that alterations or additions would not be acceptable; just that their suitability in this location should be assessed by means of a planning application.

This 'necessity' test is the one which will influence the decision on appeal as to whether the imposition of the condition at issue was legitimate. It is a matter of planning judgement for decision-makers to determine whether exceptional circumstances pertain in this case, sufficient to justify the imposition of condition prompting this appeal. For the reasons given below, it is the Planning Authority's contention that the remainder of the 'six tests' are not at issue in case.

Relevance to planning – This seeks to avoid conditions which relate to *ultra vires* matters beyond the jurisdiction of the planning authority, or which duplicate controls exercisable under other legislation. In this case, the condition imposed serves a legitimate land use planning purpose.

Relevance to the development being permitted – Conditions must not only serve planning objectives, but must be justified by the nature of the development being permitted and its effect upon its surroundings. In this case, the condition legitimately serves to afford protection to the

designated surroundings of the application site from potentially inappropriate development, which could otherwise be implemented without further consideration by the planning authority.

Ability to enforce – A condition should be practicable to enforce in the event of a breach, either by means of a Breach of Condition Notice or an Enforcement Notice. In particular, any infringement should be capable of being readily apprehended and there should be no doubt as to when any breach has arisen. In this case, the prescribed categories of development to which ‘permitted development’ rights will not apply are clear, and in the event of any breaches remedies would be readily available, as with any unauthorised construction.

Precision – The condition should be expressed in a manner which is capable of being readily understood and should not present any dubiety. In this case, the condition clearly expresses those categories of development to which the condition is intended to apply, in a manner which replicates the manner in which those categories are set out in the regulations relating to householder ‘permitted development’.

Reasonableness – Conditions which are unrealistically onerous and which might preclude the implementation of development being permitted will be regarded as being unreasonable. Likewise, conditions which could not readily be satisfied by a developer because they required the consent of others to satisfy would also be considered unreasonable. In this case, it would not be particularly onerous for a householder to have to apply on what would be likely to be a very occasional basis for proposed external alterations to, or additions to, the property. The government has included a concession in the Fee Regulations applicable to development requiring permission which would otherwise be ‘permitted development’, which has the effect of exempting such applications from the fee otherwise payable for householder planning applications.

As an aside, it should be noted that ‘permitted development’ rights are not of universal effect. Given the sensitivity of their surroundings, occupiers of properties in designated conservation areas, for example, do not benefit from the full suite of ‘permitted development’ rights otherwise available to householders. Accordingly, it is not unprecedented that some householders routinely have to apply for planning permission for the types of development being considered by means of this appeal.

OTHER ISSUES

Upon review of this consent, it has become apparent that conditions advised by Transport Scotland were not imposed on the decision as they ought to have been. Whilst the Report of Handling correctly represents Transport Scotland’s position being one of ‘no objection’, it fails to indicate that there were conditions which Transport Scotland wished to see imposed in the event of permission being granted. It should be noted that these conditions reflect those imposed on previous planning permissions at this site. This appeal therefore presents an appropriate opportunity to redress that omission by the addition of the following conditions:

- The proposed access shall join the trunk road at a new junction which shall be constructed by the applicant to a standard as described in the Department of Transport Advice Note TD 41/95 (Vehicular Access to All-Purpose Trunk Roads) (as amended in Scotland) complying with Layout 3. The junction shall be constructed in accordance with details that shall be submitted and approved by the Planning Authority, after consultation with Transport Scotland, as the Trunk Roads Authority, before any part of the development is commenced.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished.

- Visibility splays shall be provided and maintained on each side of the access to the satisfaction of the local Planning Authority, after consultation with Transport Scotland,

as the Trunk Roads Authority. These splays are the triangles of ground bounded on 2 sides by the first 2.4 metres of the centreline of the access driveway (the set back dimension) and the nearside trunk road carriageway measured 215 metres (the y dimension) in both directions from the intersection of the access with the trunk road. In a vertical plane, nothing shall obscure visibility measured from a driver's eye height of between 1.05 metres and 2.00 metres positioned at the set back dimension to an object height of between 0.26 metres and 1.05 metres anywhere along the y dimension.

Reason: To ensure that the standard of access layout complies with the current standards and that the safety of the traffic on the trunk road is not diminished and to ensure that vehicles entering or exiting the access can undertake the manoeuvre safely and with minimum interference to the safety and free flow of traffic on the trunk road.

- The gradient of the access road shall not exceed 1 in 40 for a distance of 5 metres from the nearside edge of the trunk road carriageway, and the first 5 metres shall be surfaced in a bituminous surface and measures shall be adopted to ensure that all drainage from the site does not discharge onto the trunk road.

Reason: To ensure water run-off from the site does not enter the trunk road.

- The width of the access shall be at least 5.5 metres wide for a distance of 5 metres from the nearest edge of the trunk road carriageway.

Reason: To ensure that the access is wide enough to allow vehicles to enter and exit the access at the same time without conflict.

- The new access to the site shall be formed and the existing access closed off before any works commence on the site.

Reason: To ensure that the use of the existing access is discontinued and the safety of traffic on the trunk road is improved.

CONCLUSION

In conclusion, the position of Planning Housing and Regulatory Services remains that the appeal proposal should be granted planning permission, subject to all of the conditions originally imposed, plus the addition of the conditions listed above.

Richard Kerr
Principal Planning Officer

7th February 2018