
Appeal Decision

Site visit made on 19 September 2016

by Graham Chamberlain BA (Hons) MSc MRTPI

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

Decision date: 30th September 2016

Appeal Ref: APP/M3645/W/16/3150506

Chathill Park Farm, Tandridge Lane, Tandridge, Surrey RH8 9NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs L Freed against the decision of Tandridge District Council.
 - The application Ref TA/2015/1260, dated 3 July 2015, was refused by notice dated 24 November 2015.
The application sought planning permission for the demolition of an existing dwelling, erection of a replacement dwelling and ancillary garage, together with the formation of a new vehicular access without complying with a condition attached to planning permission Ref TA/2012/552, dated 19 November 2012.
The condition in dispute is No 10 which states that: Within 3 months of the date the dwelling hereby permitted is first occupied, the existing dwelling shall cease to be used as a dwelling, shall be demolished and the land restored in accordance with a scheme to be agreed in writing with the District Planning Authority. Thereafter there shall be only one dwelling within the area edged red on the site plan attached to the application.
 - The reasons given for the condition is: To accord with the terms of the application and to ensure that the proposed dwelling is a replacement of, and not additional to, the existing dwelling, in accordance with Policies BE1, RE2 of the Tandridge District Local Plan 2001 and Policies CSP18 and CSP19 of the Core Strategy DPD 2008.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the planning application was submitted on a 'householder' application form, the Council considered the proposal as an application to vary a planning condition. The appeal was subsequently submitted as an appeal against the refusal to vary a planning condition, and it is upon this basis that I have considered the appeal. This is because the proposal described on the householder application form would be the outcome of varying the condition.

Background and Main Issues

3. Planning permission was granted for the replacement dwelling and garage in 2012 (Ref: TA/2012/552). Condition 10 attached to that planning permission required the demolition of the original house within three months of the occupation of the replacement and the land upon which the original house is sited to be restored in accordance with an agreed scheme. The original house

has not been demolished and the replacement house has been occupied in excess of three months.

4. The appellants are seeking to vary Condition 10 to enable the ground floor of the original house to be retained, modified and then used as an incidental store and workshop. The Council's reason for refusal states that the proposal would be inappropriate development within the Green Belt and harmful to its openness. The Council is of the view that very special circumstances do not exist that would outweigh the harm to the Green Belt it has identified.
5. Taking the above background into account, along with all I have read and seen, the main issues in this appeal are whether the disputed condition is necessary and reasonable in its current form having regard to the effect on the Green Belt, in particular: 1) Whether or not the proposal would be inappropriate development in the Green Belt; 2) The effect of varying the condition on the openness of the Green Belt; and 3) If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether or not the proposal would be inappropriate development

6. The appellants have suggested that the partial retention of the original house would be a re-use of an existing building in the Green Belt and thus not inappropriate development when applying Policy DP13 of the LP¹ and Paragraph 90 of the National Planning Policy Framework (the Framework).
7. However, the development subject to this appeal is the 'replacement' dwelling and garage approved in 2012. This is the basis for my consideration. The partial retention of the original house would mean the new house constructed at the appeal site could not be described as a replacement building. It would be a new building falling outside the exceptions in Policy DP13 of the LP and Paragraph 89 of the Framework. It would thus be inappropriate development in the Green Belt.
8. Both the LP and Framework specify that the re-use of buildings in the Green Belt constitutes inappropriate development if the re-use would conflict with the purposes of including land within it. The partial retention of a building in addition to the erection of a new one, which was originally intended as a full replacement, would be an encroachment of built development into the countryside. This would conflict with the purposes of including land in the Green Belt. As a result, the proposal would be inappropriate development in the Green Belt even if considered as a re-use of a building for the purposes of Policy DP13 of the LP and Paragraph 90 of the Framework.
9. The replacement dwelling is not considered by the Council to be disproportionate in size if the original is demolished in full. I have no reason to disagree. Condition 10 is therefore necessary to ensure the development approved in 2012 is not inappropriate development in the Green Belt. I therefore conclude that the varying of the condition along the lines proposed would result in inappropriate development in the Green Belt. As such, the proposal would, by definition, harm the Green Belt.

¹ Tandridge Local Plan Part 2: Detailed Policies 2014-2029, which has replaced the 2001 Local Plan.

The effect of the proposal on the openness of the Green Belt

10. The appeal site is located in a rural position adjacent to, and visible from, Tandridge Lane. The original house is located towards the western boundary of the appeal site with the new dwelling and garage more centrally located. The presence of the original dwelling diminishes the undeveloped space around the 'replacement'. The combined scale of the original house with the replacement dwelling and garage harmfully erodes the openness of the Green Belt.
11. This harmful effect would be diminished if the first floor of the original house was removed in the way proposed, but it would not be eradicated. The part of the original dwelling retained would, in combination with the replacement dwelling and garage, have a moderately harmful effect on the openness of the Green Belt. Openness is an essential characteristic of the Green Belt.

Other Considerations

12. The appellants have drawn my attention to a Lawful Development Certificate (LDC) granted by the Council (Ref: TA/2016/105). This confirms that a new building designed to be the same size as the modified original dwelling, which would be permitted by varying Condition 10 along the lines proposed, could be erected without the appellants having to first obtain planning permission and demonstrate adherence to Policy DP14 of the LP. The appellants suggest this is a material fall-back position as they would construct such an outbuilding if the appeal were to fail.
13. The Council have suggested that a new outbuilding, of a size similar to the ground floor of the original dwelling proposed to be retained, would be too large to be incidental to the enjoyment of the replacement dwelling. However, the Council's subsequent approval of the LDC application suggests such an outbuilding would be incidental for the purposes of Class E of the GPDO². I therefore share the view of the appellants that the approval of the LDC is a fall-back position to which I must afford weight as a material consideration. The LDC establishes that it is a theoretical prospect that such a building could be constructed if the original dwelling was demolished in full.
14. However, I have been presented with insufficient evidence to suggest this would be likely. The appeal site encompasses a large double garage and store to the north of the replacement dwelling. There is also a very large domestic annex to the east. There is nothing before me to suggest part of this structure could not be used or converted back into storage. In addition there are structures in the paddocks to the east and south. As such, there is already a proportionately large amount of floor space available in existing outbuildings for domestic storage and activity, including the storage of the machinery and equipment outlined in the appellant's further comments.
15. As such, it is unclear why the appellants would go to the further expense and disruption of constructing another outbuilding if the original house was demolished in full. Moreover, the part of the original dwelling proposed to be retained would be of a considerable size. There is no persuasive evidence before me to suggest the appellants would need this level of space were they to construct an outbuilding anew. As such, I am not satisfied the LDC in itself is sufficient in demonstrating that a newly constructed outbuilding of the size

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

and design shown would be a genuine prospect and thus a fall-back position to which I can afford more than limited weight.

16. The appellants have also suggested that it would be unsustainable to require them to completely demolish the original dwelling only for them to reconstruct part of it. Notwithstanding my findings above, that this is an unlikely outcome, sustainability should not be defined narrowly. It would also be unsustainable to permit a proposal that would harm the Green Belt.
17. The original reason for Condition 10, in part, referred to Policies CSP18 and CSP19 of the Core Strategy DPD 2008. These policies relate to character, design and density. The Council has not alleged any harm in these respects, a view I share notwithstanding the harm to the Green Belt I have identified. However, the absence of harm to the character and appearance of the area is to be expected and is thus a neutral consideration rather than a benefit. I therefore conclude that, when taken together, the other considerations I have identified attract only limited weight as factors in favour of the proposal.

Very Special Circumstances

18. Paragraph 87 of the Framework sets out the general presumption against inappropriate development within the Green Belt. It states that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.
19. I have concluded that the proposal would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. I have also concluded that the proposal would moderately harm the openness of the Green Belt. Paragraph 88 of the Framework requires substantial weight to be given to any harm to the Green Belt.
20. On the other hand, the other considerations I have identified only carry limited weight in favour of the proposal. As such the harm to the Green Belt is not clearly outweighed by the other considerations I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. The proposal is therefore contrary to Policies DP10 and DP13³ of the LP, which seek to prevent inappropriate development in the Green Belt without very special circumstances having been demonstrated. An aim consistent with the Framework. As such, Condition 10 is necessary and thus reasonable to ensure the development originally approved, and subsequently constructed, does not harm the openness of the Green Belt.

Conclusion

21. For the reasons given above, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Graham Chamberlain
INSPECTOR

³ The Council refers to Policy DP14 in its reason for refusal but as the proposal relates to the erection of a new dwelling without complying with conditions, and not the construction of a new outbuilding, adherence with this policy is not a determinative matter.