
Appeal Decision

Site visit made on 19 September 2016

by David Reed BSc DipTP DMS MRTPI

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

Decision date: 20 October 2016

Appeal Ref: APP/G2245/W/16/3151576

Birchwood, Pillar Box Lane, Seal Chart, Seal, Kent TN15 0EZ

- 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 Scott Moore-Fay against the decision of Sevenoaks District Council.
 - The application Ref SE/16/00416/CONVAR, dated 10 February 2016, was refused by notice dated 5 April 2016.
 - The application sought planning permission for the demolition of existing garage and the erection of a smaller garage, the erection of a two storey rear extension, alterations to fenestration and re-positioning of the fuel tank without complying with a condition attached to planning permission Ref SE/15/01854/HOUSE, dated 19 August 2015.
 - The condition in dispute is No 3 which states that: No extension or external alterations shall be carried out to the dwelling, despite the provisions of any Development Order.
 - The reason given for the condition is: To prevent inappropriate development in the Green Belt as supported by Policy GB1 of the Sevenoaks Allocations and Development Management Plan.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing garage and the erection of a smaller garage, the erection of a two storey rear extension, alterations to fenestration and re-positioning of the fuel tank at Birchwood, Pillar Box Lane, Seal Chart, Seal, Kent TN15 0EZ in accordance with the application Ref SE/16/00416/CONVAR, dated 10 February 2016, without compliance with condition No 3 previously imposed on planning permission Ref SE/15/01854/HOUSE, dated 19 August 2015, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from 19 August 2015.
 - 2) The materials to be used in the construction of the development shall be those indicated on the approved plan: SP1033-PL02, Rev C – dated 30.06.2015.
 - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending, revoking and re-enacting that Order) no enlargement, improvement or other alteration permitted by Class A or B of Part 1 of Schedule 2 of the 2015 Order (as amended), shall be carried out or made to the dwelling

without the grant of a further planning permission by the local planning authority.

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: SP1033-PL02, Rev C – dated 30.06.2015.

Main Issue

2. The main issue is whether the condition is reasonable or necessary to maintain planning control in order to prevent inappropriate development that would be harmful to the Green Belt.

Reasons

3. Birchwood is a chalet bungalow situated in a good sized plot on the corner of Pillar Box Lane and The Brooms in the Green Belt. In August 2015 planning permission was granted for a two storey rear extension to the property, together with some other alterations which are not relevant to this appeal. A condition was attached to the permission precluding any extension or alteration to the dwelling, despite the provisions of any Development Order, and the appellant seeks the removal of this restriction.
4. The National Planning Policy Framework (NPPF) makes clear in paragraph 89 that new buildings are inappropriate in the Green Belt. However, an exception is made in the case of building extensions which do not result in a disproportionate addition over and above the size of the original building, in this case that built in 1960. Policy GB1 of the Sevenoaks Allocations and Development Management Plan 2015 (the SADMP) allows for extensions to existing dwellings in the Green Belt providing the total floorspace of the proposal, together with any previous extensions, would not result in an increase of more than 50% above the floorspace of the original dwelling. This policy is broadly consistent with the NPPF and provides clarity that an increase of more than 50% would amount to a disproportionate addition to the dwelling and therefore would constitute inappropriate development in the Green Belt.
5. In this case, according to the Council, and taking account of a previously constructed porch on the front elevation and a small single storey side extension, the proposal would result in an increase in floorspace of 49% over that of the original 1960 dwelling, thereby just within the policy limit. The appellant does not seriously dispute this figure, putting the increase at '45%+'.
6. Any further extensions to the dwelling as a result of permitted development rights could therefore increase the floorspace of the original building above the 50% limit in Policy GB1 of the SADMP, thus conflicting with the objective of the policy and resulting in a disproportionate addition to the original building. In such an eventuality, the outcome would be inappropriate development in the Green Belt, contrary to paragraph 87 of the NPPF that this should only be permitted in very special circumstances.
7. Planning Practice Guidance (PPG) clarifies when it is appropriate to use conditions to restrict the use of permitted development rights. For the reasons explained above, in this instance the restriction of such rights to further extend the dwelling meets the test of necessity and exceptional circumstances exist to justify the restriction¹.

¹ The tests in PPG. Reference ID: 21a-017-20140306

8. However, as further required by PPG, the scope of the condition as currently worded is not precisely defined, and there is no reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015 so that it is not clear exactly which rights have been withdrawn. The condition is only necessary to remove rights to extend or enlarge the dwelling, not other rights, so only Classes A and B in Part 1 of Schedule 2 of the Order need be withdrawn. Class C relates to alterations to the roof which would not significantly enlarge the building, and any porch erected under Class D would be small, a maximum of 3 m². Outbuildings, hard surfaces, chimneys, flues etc and microwave antennae (Classes E, F, G and H) would not involve increases in the size of the dwelling and therefore do not need to be restricted, nor the minor operations in Part 2 of Schedule 2, which include gates, fences, walls etc, means of access to a highway, exterior painting and CCTV cameras. This clarity should allay some of the concerns of the appellant about the condition as currently worded.
9. A condition is necessary to prevent inappropriate development in the Green Belt without a planning application first being submitted to establish that very special circumstances exist to justify the proposal. This is a relevant planning objective. Whilst there are already restrictions in the 2015 Order, the condition goes further, in particular restricting certain extensions to the rear or side of the property without express planning permission. Birchwood lies within an Area of Outstanding Natural Beauty which further limits permitted development rights for extensions and alterations, but does not remove them completely. In the case of Class B it does, but the Order may be amended in future.
10. The condition, suitably amended, would be precise, enforceable, related to the development and reasonable in all other respects. The lawful development certificate for the site relates to outbuildings which are a separate matter. It is claimed that similar properties nearby which have been extended have not had permitted development rights removed, but there are no details to establish whether the circumstances are comparable. Unextended dwellings in the Green Belt will retain their permitted development rights, but if planning permission is sought any previous extensions would be taken into account when assessing the proposal against the 50% limit. The Council's planning policies do not in themselves restrict permitted development rights, this only arises if a condition is imposed on a specific permission as in this case.
11. For these reasons the condition, suitably amended, is reasonable and necessary to maintain planning control in order to prevent inappropriate development that would be harmful to the Green Belt.
12. In addition to the amended condition it is necessary to re-impose the standard implementation time limit as it was not clear to me whether the works that are taking place on site represent a commencement of the permitted scheme. It is also necessary to control the materials to be used to ensure the satisfactory appearance of the development and to specify the approved plans for certainty.
13. Having regard to the above the appeal should be allowed, but only in respect of substituting the condition in dispute with one that is more precisely worded.

David Reed

INSPECTOR