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## Appeal Decision

Site visit made on 17 November 2016

**by Beverley Doward BSc BTP MRTPI**

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

**Decision date: 12 December 2016**

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**Appeal Ref: APP/P2365/W/16/3154166**

**Turners Farm, School Lane, Westhead, Lancashire, L40 6HW**

- 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 Nick Howard against the decision of West Lancashire Borough Council.
  - The application Ref 2015/1210/FUL, dated 20 November 2015, was refused by notice dated 13 January 2016.
  - The application sought planning permission for part two storey/part single storey extension to rear, with porch to front. Increased roof height to main dwelling without complying with a condition attached to planning permission Ref 2013/0816/FUL, dated 27 September 2013.
  - The condition in dispute is No 4 which states that: 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development (Amendment) (No.2) (England) Order 2008 or any subsequent Orders or statutory provision re-enacting the provisions of these Orders no garages, extensions, alterations, porches, garden sheds, out buildings, greenhouses, swimming pools, hardstandings or means of enclosure shall be erected or undertaken without the express written permission of the Local Planning Authority.'
  - The reason given for the condition is: 'In order to avoid conflict with the Local Planning Authority's policy of strict control of development in the Green Belt and to ensure compliance with Policy DS2 in the West Lancashire Replacement Local Plan.'
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### Decision

1. The appeal is allowed and planning permission is granted for part two storey/part single storey extension to rear, with porch to front. Increased roof height to main dwelling at Turners Farm, School Lane, Westhead, Lancashire, L40 6HW in accordance with the application Ref 2015/1210/FUL dated 20 November 2015, without compliance with condition numbers 1 and 4 previously imposed on planning permission Ref 2013/0816/FUL dated 27 September 2013 and subject to the following new conditions:
  - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Plan reference 4230 drawing 1 rev D and plan reference 4230 drawing 2 revision E received by the Local planning Authority on 05/09/13.
  - 2) All external finishes and roofing materials shall be identical to those on the existing building in respect of shape, colour and texture. If the applicant or developer has any doubts as to whether the proposed

materials do match they should check with the Local Planning Authority before commencement of the building works.

- 3) Notwithstanding the provisions of Schedule 2 Part 1 (Classes A, B, D and E) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions, enlargements, garages, porches, garden sheds, out buildings, greenhouses, swimming pools shall be erected or constructed other than those expressly authorised by this permission.

### **Application for costs**

2. An application for costs was made by Mr Nick Howard against West Lancashire Borough Council. This application is the subject of a separate decision.

### **Background and Main Issue**

3. The appeal site comprises a detached dwelling within the Green Belt. Planning permission was granted in September 2013 for a scheme of extensions comprising a part two storey/part single storey extension to the rear, a front porch and increased roof height to the main dwelling. The permission was subject to the condition in dispute.
4. The application form submitted with the application subject to this appeal indicates that the appellant considers that the condition in dispute onerously restricts his ability to carry out minor improvement works to his home, outbuildings and garden and that he sought to vary the condition by the deletion of the restrictions on development for garages, alterations, porches, garden sheds, out buildings, greenhouses, hardstandings, swimming pools and means of enclosure but that he did not object to the retention of the reference to extensions.
5. In the appeal documentation the appellant contends that the condition in dispute exceeds what is reasonably necessary in terms of the planning application permitted, does not accord with the advice set out in the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG) in relation to the use of planning conditions and that exceptional circumstances have not been demonstrated to justify the removal of permitted development rights.
6. The reason given for the condition on the decision notice is in order to avoid conflict with the Local Planning Authority's policy of strict control of development in the Green Belt and to ensure compliance with Policy DS2 in the West Lancashire Replacement Local Plan (WLRLP). The Officer's report refers to the policies of the then submission version of the Local Plan. Policy DS2 of the WLRLP has now been superseded by policy GN1 of the adopted West Lancashire Local Plan 2012-2027 Development Plan Document (Local Plan). Accordingly, policy GN1 of the Local Plan is the current development plan policy relevant to this appeal.
7. In its appeal statement the Council contends that the condition in dispute is appropriate to the development in question for the purposes of protecting the Green Belt and that it is consistent with the requirements of the Framework and PPG.

8. Taking the above background into account I consider that the main issue in this case is whether the condition in dispute is necessary, relevant or reasonable having regard to national and local planning policy in relation to development within the Green Belt.

### **Reasons**

9. The Council indicates that original proposals submitted under the 2013 application were considered to constitute inappropriate development in the Green Belt and that subsequently the appellant was requested to reduce the size of the proposals. It indicates that the revised scheme of extensions, as permitted, comprise an increase of about 56% in the internal volume of the original dwelling and about 43% of the internal footprint. The appellant does not dispute this.
10. The Council also indicates that the revised scheme as permitted, although it exceeded the guidance set out in the relevant Supplementary Planning Guidance (SPG) relating to domestic extensions in the Green Belt at the time, was considered to be acceptable and therefore in compliance with the relevant development plan policy relating to Green Belt at that time and the Framework. However, given the scale and size of the resultant dwelling compared to the original building, it considered that the extensions were at the limits of that which could be considered acceptable and that therefore it followed that any additional volume subsequently added to the building or as a structure sited within the curtilage would fall outside the definition of development that was not inappropriate in the Green Belt. Accordingly, it considers that the condition was necessary to make the development acceptable in planning terms by ensuring that the Council would have control over any subsequent development.
11. Policy GN1 of the Local Plan indicates that development proposals within the Green Belt will be assessed against national policy and any other relevant local policies.
12. The Framework sets out national planning policy on development within the Green Belt. It indicates that the essential characteristics of Green Belts are their openness and their permanence. It also indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. Paragraph 89 of the Framework indicates that the construction of new buildings should be regarded as inappropriate in the Green Belt unless they fall within certain specified exceptions. One of these exceptions relates to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
14. The SPG relating to domestic extensions in the Green Belt at the time that the 2013 application was considered has now been superseded by the Council's Supplementary Planning Document: Development in the Green Belt October 2015 (SPD) which is intended to assist the Council in determining planning applications within the Green Belt.
15. In the context of paragraph 89 of the Framework in relation to extensions and alterations to buildings within the Green Belt the SPD indicates that the total volume of the proposal, together with any previous extensions, alterations and

non-original outbuildings should not result in an increase of more than 40% above the volume of the original building. The justification for this is that any extension or alteration to a building within the Green Belt which exceeds 40% of the original building is considered to be materially larger and therefore disproportionate. In the section of the SPD relating to alterations and extensions to buildings in the Green Belt it also indicates that the Council reserves the right to remove permitted development rights for subsequent development which may have an adverse impact upon the openness of the Green Belt. There is no indication that this would only apply in cases that are justified by very special circumstances.

16. The Framework indicates that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. Furthermore, the PPG advises that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. It also indicates that area wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.
17. From the evidence before me in this case it seems to me that in considering the scheme of extensions to be acceptable and therefore in compliance with the relevant development plan policy relating to Green Belt and the Framework it follows that the Council accepted that the scheme of extensions in themselves were judged not to result in disproportionate additions over and above the size of the original building and were not inappropriate development. Consequently, they were not harmful to the openness of the Green Belt.
18. However, having regard to the evidence including the guidance in the Council's current SPD I consider that the permitted extensions are at the limit of what could be considered as not disproportionate additions over and above the size of the original building. Therefore, notwithstanding that the permitted extensions may not have been inappropriate development any further volume which could subsequently be added to the building as permitted development would result in inappropriate development within the Green Belt which is by definition harmful and may also have an adverse impact on the openness of the Green Belt.
19. Accordingly, I am satisfied that an element of restriction is necessary, relevant and reasonable to protect the Green Belt having regard to the requirements of policy GN1 of the Local Plan, the SPD and the Framework relating to inappropriate development in the Green Belt and to prevent the openness of the Green Belt being eroded by further extensions and enlargements. This will allow the Council to consider proposals for further extensions in the context of the relevant national and local planning policy. I am also satisfied that this justifies the exceptional circumstances required by the PPG.
20. However, some of the provisions of the condition in dispute namely alterations, hardstandings and means of enclosure as provided for under the provisions of Schedule 2 (Part 1 Classes C and F) and (Part 2 Class A) of the Town and Country Planning (General Permitted Development (England) Order 2015 (GPDO) would not add to the volume of the building so as to result in inappropriate development. Accordingly, I consider that the references to

these forms of development in the condition in dispute are not necessary, extend beyond that which could reasonably be considered relevant to the development permitted and do not meet the exceptional circumstances test. Therefore, I consider that they should be deleted.

21. The appellant does not dispute the inclusion of extensions as permitted under the provisions of Schedule 2 (Part 1 Class A) of the GPDO in the condition in dispute and clearly such extensions would add cumulatively to the building. However, roof enlargements and the addition of further porches under the provisions of Schedule 2 (Part 1 Classes B and D) of the GPDO would also, albeit restricted in size, add cumulatively to the volume of the building. In this particular case I am mindful that the dwelling has at least two more external doors to which a porch could be added as permitted development. Accordingly, I consider that it is reasonable, relevant and necessary to restrict such development.
22. Furthermore, in so far as whether outbuildings that would be permitted development under the provisions of Schedule 2 (Part 1 Class E) of the GPDO could be considered as an extension to the dwelling is a matter of fact and degree to be considered on a case by case basis, I consider that it is also reasonable, relevant and necessary to retain the references to garages, garden sheds, outbuildings, greenhouses and swimming pools.
23. I have been referred by the Council to the findings of another Inspector in a recent appeal decision in support of its case. There may be some similarities between that case and this one, albeit that the condition in dispute in that case related to a permission for a replacement dwelling. However, I am not aware of all of the details. In any event each proposal needs to be considered on its own merits having regard to the specific circumstances of the case. I confirm that I have considered the appeal proposal on this basis and that the decision referred to has not been determinative in my consideration of this appeal.

### *Conditions*

24. The PPG indicates that to assist with clarity, decision notices for the grant of permission under section 73 should also repeat the relevant conditions from the original permission unless they have already been discharged. I am aware that the development has been implemented. Therefore, I have not imposed the standard time limit. However, as I have no information about the status of the other conditions imposed on the original planning permission, I have imposed all those that I consider remain relevant. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
25. I have deleted the disputed condition and replaced it with a modified one as indicated above. In accordance with the advice of the PPG that the scope of such conditions needs to be precisely defined by reference to the relevant provisions in the GPDO so that it is clear exactly which rights have been limited or withdrawn I have referred to the separate classes of development. I have renumbered the conditions to be attached accordingly.

**Conclusion**

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

*Beverley Doward*

INSPECTOR