
Appeal Decision

Site visit made on 10 January 2017

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

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

Decision date: 06 February 2017

Appeal Ref: APP/E3715/W/16/3160222

Highview, Withybrook Lane, Shilton, Coventry CV7 9HY

- 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 I Townsend against the decision of Rugby Borough Council.
 - The application Ref R16/1783 dated 12 August 2016, was refused by notice dated 21 September 2016.
 - The application sought planning permission for retrospective extensions and alterations, to a dwellinghouse, retention of detached garage and outbuilding and alteration to residential curtilage without complying with a condition attached to planning permission Ref R16/1115, dated 2 August 2016.
 - The condition in dispute is No 2 which states that: *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any order revoking or re-enacting those orders, no development shall be carried out which comes within:*
 - Class A-enlargement, improvement or other alteration to the dwellinghouse.*
 - Class B- additions etc. to the roof of the dwellinghouse;*
 - Class C- other alterations to the roof of the dwellinghouse;*
 - Class D- porches; or*
 - Class E- buildings etc incidental to the enjoyment of the dwellinghouse,**of Schedule 2 Part 1 of the Order without the prior written permission of the Local Planning Authority.*
 - The reason given for the conditions is: *to prevent further inappropriate development within the Green Belt and in the interest of the character of the area and visual amenity.*
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Preliminary matter

1. The application seeks to vary the condition to allow permitted development under Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the Order). The application does not seek to change any other part of the condition.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issue is whether this part of the condition is reasonable and necessary in the interests of protecting the Green Belt from inappropriate development and in the interests of the character and appearance of the Green Belt.
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Reasons

4. The planning condition removes permitted development rights for any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse, as such, or the maintenance, improvement or other alteration of such a building or enclosure.
5. The provisions of the Order do not differentiate between properties that are within the Green Belt or those that are not. For that reason there is a legitimate expectation that such national permitted development rights should apply to dwellinghouses within the Green Belt. Planning Practice Guidance indicates that it will rarely pass the test of necessity to remove such rights.
6. Nonetheless, the planning permission granted included an extension to the residential curtilage of the dwelling. Whilst I acknowledge that this was in relation to small parts of the overall site area, this amounted to a material change of use of land. Since this is not an exception within paragraphs 89 and 90 of the National Planning Policy Framework (the Framework), it amounted to inappropriate development. Inappropriate development is by definition harmful to the Green Belt and should not be granted except in very special circumstances. Rugby Borough Core Strategy (CS) policy CS1 is consistent with that since it specifies that only where national policy on Green Belt allows, will development be permitted. Furthermore CS policy CS16 seeks to ensure that development does not cause harm to the qualities, character and amenity of the area in which development is situated.
7. Also, given that the one of the aims of Green Belt policy is to keep land permanently open, this condition is reasonable and necessary in those regards. The circumstances are exceptional in terms of the Planning Practice Guidance, since the development included inappropriate development which was pertinent to the consideration of the removal of Class E permitted development rights.
8. I acknowledge that the condition takes away the permitted development rights in respect of all of the site. Nonetheless, there would need to be very special circumstances to grant planning permission for a change of use. The withdrawal of this particular permitted development right on all the site contributed to the Council's consideration of the development overall, which included also disproportionate additions to the dwelling. In these circumstances I find the removal of Class E rights to be necessary; relevant to planning and the development; and reasonable in all respects.
9. That the Council does not have a local plan policy that sets out its approach to incidental outbuildings for dwellinghouses in the Green Belt does not undermine my consideration of this matter because of the Framework and CS policy provisions already referred to. The removal of part of the condition is unwarranted having regard to section 9 of the Framework.
10. For the reasons given above I conclude that the appeal should be dismissed.

Julia Gregory

Inspector