

Appeal Decision

Site visit made on 21 February 2017

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

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

Decision date: 02 March 2017

Appeal Ref: APP/V1505/W/16/3163444

Bullyview, 273 London Road, Wickford SS12 0LG

- 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 and Mrs J Young against the decision of Basildon District Council.
 - The application Ref 16/00796/VAR, dated 8 June 2016, was refused by notice dated 30 August 2016.
 - The application sought planning permission for a bungalow without complying with a condition attached to planning permission Ref BAS/537/86, dated 19 August 1986.
 - The condition in dispute is No 4 which states that: *'Notwithstanding the provisions of Article 3 of the Town and Country Planning General Development Orders 1977-1985 or any re-enactment thereof, there shall be no further enlargement to the dwelling or building operations within the curtilage of the dwelling except with express planning permission granted pursuant to part iii of the Town and Country Planning Act 1971.'*
 - The reason given for the condition is: *'The property is located within the green belt and this condition is imposed in the interests of protecting any further development in this location.'*
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Decision

1. The appeal is allowed and planning permission is granted for a bungalow at Bullyview, 273 London Road, Wickford SS12 0LG in accordance with the application Ref 16/00796/VAR, dated 8 June 2016, without compliance with the conditions previously imposed on the planning permission Ref BAS/537/86, dated 19 August 1986.

Preliminary Matters

2. The appeal property is a detached bungalow in the Green Belt. The dwelling sits within a large plot that contains a number of buildings used as dog kennels. The planning history of the site indicates that the use of those kennels for the breeding and boarding of dogs¹ is separate from the residential use of the bungalow.
3. The appeal proposal would remove a condition which withdraws permitted development rights to enlarge the bungalow or carry out building operations within its curtilage. The appeal submissions do not distinguish between the curtilage of the dwelling and the dog kennel use. However, for the avoidance of

¹ Application reference 00/00540/BAS, Change of use of 12 dog kennels to part boarding and part breeding and the linking of two access drives together.

doubt, insofar as my decision affects building operations, it relates to operations incidental to the enjoyment of the dwelling and not to the dog kennel use.

4. The appellants have indicated that the appeal property is subject to an Agreement under Section 52 of the Town and Country Planning Act 1971 which replicates the terms of the condition in dispute. Procedures for the modification or discharge of planning agreements are set out in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992. No such application or appeal is before me and, therefore, the land would be bound by the Agreement irrespective of my decision. It would be for the decision maker in any application or appeal to determine whether the requirements of the Agreement remain valid.

Main Issue

5. The main issue is the effect of the proposal on the openness of the Green Belt.

Reasons

6. The existing bungalow replaced an earlier dwelling which was located to the rear of the site². The Council's evidence indicates that the current bungalow has floor area of some 133sqm and is significantly larger than the one it replaced. Further, that it took up the entire floor area limit allowed under the relevant Council policy then in force. The Council, therefore, imposed the condition now in dispute in order to maintain control over further development in the Green Belt.
7. National Planning Policy Framework (the Framework) paragraph 79 advises that the essential characteristics of Green Belts are their openness and permanence. Paragraph 88 requires substantial weight to be given to any harm to the Green Belt.
8. Policy BAS GB4 of the Basildon District Local Plan Saved Policies 2007 (LP) allows dwellings in the Green Belt to be extended to up to 90sqm or by 35sqm over and above the original floor area of the dwelling (or the area as at 1 July 1948), whichever is the greater. This is subject to considerations including the removal of permitted development rights where their implementation could cause material harm to the Green Belt.
9. Policy BAS GB4 does not define 'original' dwelling, although the definition of a dwelling set out in Policy BAS GB5 includes one which has the benefit of a planning permission and the supporting text for Policy BAS GB4 (paragraph 3.22) says that consideration will be given to any previous planning approvals granted by the Council or Secretary of State. I am also mindful that the Glossary to the Framework defines 'original building' as one as it existed on 1 July 1948 or, if constructed after that date, as it was built originally. There is nothing to suggest that the existing bungalow has been extended since it was built originally.
10. I am, therefore, inclined to agree with the appellants' view that the grant of planning permission for the replacement building marks a new chapter in the history of the site. On this basis, the effect on the Green Belt of re-instating permitted development right should not take into account the increase in size of the existing dwelling over the earlier building. I note that the Inspector in the Castledon Road appeal³ came to a similar view when considering the extension of a replacement dwelling.

² Application reference BAS/53/86

³ Appeal reference APP/V1505/D/13/2210040

11. The Council has drawn my attention to four appeal decisions in support of its position. Three of them⁴ concern proposals to further extend previously extended dwellings and are not, therefore, comparable with the current building which has not been extended. The fourth decision⁵ does deal with the extension of a replacement building. However, it seems to me that the Inspector found that the extension amounted to a disproportionate increase in size over the existing building, rather than the one it replaced.
12. Paragraph reference 21a-017-20140306 of the Planning Practice Guidance advises that conditions restricting the use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Since the General Permitted Development Order 2015 (as amended) (the Order) does not place particular limitations or conditions on permitted development rights for dwellings in the Green Belt, it is reasonable to presume that a Green Belt location, of itself, does not amount to an exceptional circumstance in this regard.
13. Similarly, I am not persuaded that any additions permitted under the Order would necessarily result in a disproportionate increase in size over the existing dwelling. Therefore, whilst it is not possible to reach a firm conclusion on whether the proposed re-instatement of permitted development rights would breach the requirement of Policy BAS GB4 for the floorspace of extensions not to exceed 35sqm, I consider that the proposal would not conflict with the underlying aims of the policy.
14. The Council has not produced substantive evidence to show that other exceptional circumstances exist in this case. The appeal site is located at the end of a row of similar properties and is characterised by established built development. It is also fairly well contained by boundary planning and fencing. Whilst the extension of the dwelling or other building operations permitted under the Order could potentially add somewhat to the overall bulk of built development at the site, given the site's enclosed setting, I am not convinced that this would result in a material loss of openness of the Green Belt in this case. Consequently, I consider that the proposal would not conflict with paragraphs 79 or 88 of the Framework.

Conditions

15. The original permission was granted subject to four conditions. As the bungalow has been completed, conditions 1 (time limit for commencement), 2 (details of materials) and 3 (provision of a turning facility) are no longer necessary. As set out above, I have also found that condition 4 is not necessary.

Conclusion

16. For the reasons set out above, the appeal should be allowed and planning permission should be granted without the conditions previously imposed.

Simon Warder

INSPECTOR

⁴ Appeal references APP/V1505/D/15/3159306, APP/V1505/D/16/3159866 and APP/V1505/D/15/3022069

⁵ Appeal reference APP/V1505/D/16/3142684