The Planning Inspectorate

Appeal Decision

Site visit made on 15 May 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 24th May 2017

Appeal Ref: APP/H1515/W/16/3165798
Orchard Cottage, Ongar Road, Pilgrim's Hatch, Essex CM15 9SA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr and Mrs A Coolbergen against the decision of Brentwood Borough Council.
- The application Ref 16/01309/FUL, dated 23 September 2016, was approved on 18 November 2016 and planning permission was granted subject to conditions.
- The development permitted is removal of Condition 7 (Removal of Permitted Development rights) on BRW/720A/77 (Construction of Horticultural Worker's Bungalow).
- The condition in dispute is No 1 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), the dwelling hereby permitted shall not be extended or enlarged in any way through Class A, B or D of Part 1 of Schedule 2 of the order without the prior grant of specific planning permission by the local planning authority.
- The reason given for the condition is: To prevent the creation of a dwelling of disproportionate size that would conflict with the policies of restraint within the Green Belt.

Decision

1. The appeal is allowed and the planning permission Ref 16/01309/FUL for removal of Condition 7 (Removal of Permitted Development rights) on BRW/720A/77 (Construction of Horticultural Worker's Bungalow) at Orchard Cottage, Ongar Road, Pilgrim's Hatch, Essex CM15 9SA, granted on 18 November 2016 by Brentwood Borough Council, is varied by deleting conditions 1 and 2.

Background and Main Issue

2. The appeal site is within the Metropolitan Green Belt where outline planning permission was granted for an horticultural workers bungalow on the 28 November 1977 under Council reference BRW/720/77. In addition to a standard agricultural occupancy condition the permission was subject to other conditions, including No 6 which limited the dwelling to single-storey construction only providing a maximum of 900 square feet living accommodation.

3. Reserved matters approval was granted on 15 March 1978 (reference BRW/720A/77) subject to conditions including No 7 which repeated the requirements of the outline Condition No 6 adding the further rider that no further extensions otherwise allowed under the Town and Country Planning

(General Development Order) 1977 be permitted without the Council's prior approval.

4. Having been built as approved the dwelling was subsequently added to with a ground-floor lean-to extension in 1982 and first floor accommodation in the roofspace in 1984 and which is as it currently exists. The appellant wishes to extend the cottage but a certificate of lawfulness application for a single storey rear extension and rear dormer was refused by the Council on 3 June 2016 (reference 16/00554/S192). Because of this decision the appellant applied for the removal of Condition 7 to reserved matters approval BRW/720A/77. The Council granted permission for its removal applying Condition 1 as set out above and for the reasons given. The appeal is made directly against the imposition of this condition.

5. Consequently, the main issue is whether Condition 1 is reasonable and necessary in order for the development to comply with local and national policies in respect of the Green Belt.

Reasons

6. The Council's approval was for the removal of a condition attached to the original consent for the detailed matters reserved following outline planning permission for a horticultural workers bungalow granted on 28 September 1977 (BRW/720/77). This original reserved matters approval (BRW/720A/77) had gone further than granting consent for the submitted details. In addition to repeating the agricultural occupancy condition attached to the outline permission it had included a further Condition 7. This had the effect of amending Condition 6 on the outline consent, that the dwelling be of single storey construction only providing a maximum of 900 square feet living accommodation, by further removing the permitted development rights for further extensions extant at that time.

7. Subsequent to being built, and later extended in the 1980s, the existing dwelling is not of single storey construction and exceeds 900 square feet living accommodation. As it would appear these later additions are now lawful the Council were correct to conclude that Condition 7 referring to these requirements was no longer necessary or reasonable. However, the Council considered the removal of domestic permitted development rights applied by the other part of Condition 7 remained necessary and in removing this an updated condition was applied referring to the current General Permitted Development Order[1] (GPDO) provisions.

8. Although the application referred to a historic reserved matter approval the condition subsequently applied, in place of that removed, should have been assessed with reference to current policy and guidance. The well-known tests for the imposition of planning conditions, as set out in paragraph 206 of the National Planning Policy Framework (the Framework), are that they be necessary, relevant to planning and the development to be permitted, enforceable, precise and reasonable in all other respects.

9. The national Planning Practice Guidance (PPG) provides further advice over the imposition of planning conditions. Paragraph 25[2] of the PPG advises that 'conditions relating to anything other than the matters to be reserved can only

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015
[2] Paragraph: 025 Reference ID: 21a-025-20140306 Revision date: 06 03 2014

be imposed when outline planning permission is granted. The only conditions which can be imposed when the reserved matters are approved are conditions which directly relate to those reserved matters'. Although similar Government advice might not have been in existence when Condition 7 was attached to BRW/720A/77, whether it would still meet the required tests should have been considered when replacing it with Condition 1 which similarly removes permitted development rights to a reserved matters approval.

10. There is no evidence that the reserved details approved under BRW/720A/77 were in any way unacceptable in respect of the layout of the site and the siting, design and external appearance of the building. Although the dwelling was subsequently altered and extended, I do not find it reasonable or necessary, on the basis of the paragraph 25 PPG advice, to now make the approval of these historic reserved matter details the subject of a condition additional to and beyond the requirements of those applying to the outline consent.

11. The determination of this appeal provides the power to reverse or vary any part of the Council's decision. Whilst the appeal is in respect of Condition 1 the appellant has questioned Condition 2 of 16/01309/FUL. This states that: 'This permission relates only to Condition 7 and in all other respects the development shall be carried out fully in accordance with planning permission reference BRW/720A/77 granted on 28th September 1977'. The Council has given the reason: To establish the scope of this permission.

12. Condition 2 is inaccurate as reserved matter approval BRW/720A/77 was granted on 15 March 1978 and it was the outline permission BRW/720/77 which was dated 28th September 1977. However, notwithstanding this error, the application determined was made for the removal of Condition 7, and not in relation to any of the other conditions. As the Council's approval does not alter the other conditions on BRW/720A/77 I do not find that Condition 2 of 16/01309/FUL would meet the tests of being either necessary or reasonable.

13. The evidence is that the original reserved matter approval for the dwelling sought to reinforce the condition limiting the size of the dwelling approved in outline by further removing domestic permitted development rights. This would be now contrary to PPG advice and be unreasonable. National and local Green Belt policy requires no such restriction on the permitted development rights applying to dwellings. Although the scope of such permitted development rights have increased under the current GPDO this provides no justification for the condition contested in this appeal.

14. Because I find that the conditions that the Council has applied fail the tests of necessity and reasonableness their removal would be without prejudice to the Council's current Brentwood Replacement Local Plan[3] policies GB1 and GB2, and those of part 9 of the Framework, in respect of protecting the Green Belt.

Conclusion

15. For the reasons explained I conclude that the appeal be allowed in the terms set out above.

Jonathan Price INSPECTOR

[3] Brentwood Replacement Local Plan – adopted 25 August 2005