
Appeal Decision

Site visit made on 25 April 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 01 June 2017

Appeal Ref: APP/J3720/W/17/3167623

Mayfield Farm, Bear Lane, Henley-in-Arden B95 5JJ

- 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 J Wilson (Oakley Mayfield Limited) against the decision of Stratford-on-Avon District Council.
 - The application Ref 16/03474/VARY, dated 7 November 2016, was refused by notice dated 20 December 2016.
 - The application sought outline planning permission for the demolition of existing workshops and the erection of 8no. detached dwellings (all matters reserved except for access) without complying with a condition attached to planning permission Ref 15/03517/OUT, dated 19 April 2016.
 - The condition in dispute is No 12 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no development covered by Part 1 Classes A, B, C, D and E and Part 2 Class A shall be carried out without planning permission granted by the District Planning Authority.
 - The reason given for the condition is: To prevent harm being caused to the character of the area and to the Green Belt having regard to Section 9 and paragraphs 56-59 of the NPPF, saved policies PR.1 and DEV.1 of the Local Plan Review and Core Strategy: Proposed Submission policies CS.5, CS.9 and CS.10.
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Decision

1. The appeal is allowed in part and outline planning permission is granted for the demolition of existing workshops and the erection of 8no. detached dwellings (all matters reserved except for access) without compliance with condition number 12 previously imposed on planning permission Ref 15/03517/OUT, dated 19 April 2016 but subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr J Wilson (Oakley Mayfield Limited) against Stratford-on-Avon District Council. This application is the subject of a separate Decision.

Procedural matters and background

3. The outline planning permission for 8 detached dwellings includes a condition removing permitted development rights in respect of enlargement, improvement or other alteration, additions to the roof or other roof alterations, porches, buildings incidental to the enjoyment of a dwellinghouse and the
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erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.¹

4. At the time that the original planning permission² was given, the Stratford-on-Avon District Core Strategy 2011 to 2031 (CS) was emerging. The CS was subsequently adopted on 11 July 2016, prior to the Council's refusal of the application to remove Condition 12, which is the subject of the appeal.
5. The Planning Practice Guidance (PPG)³ makes clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. As I have no information before me about the status of the other conditions imposed on the original planning application, I shall impose all of those conditions 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.

Main Issue

6. The main issue is whether the condition is necessary and reasonable, having regard to local and national policies aimed at safeguarding:
 - the openness of the Green Belt; and,
 - the character and appearance of the area.

Reasons

Green Belt

7. The appeal site is located just outside the small town of Henley-in-Arden to the west of the railway line. Though there is a golf course to the north, the site is largely surrounded by open fields. It is accessed via Bear Lane along a private road that terminates at the site but also provides access to two dwellings nearby. The site is occupied by a collection of single storey workshops constructed of a mixture of brick, wood and corrugated metal sheets which appeared to be in poor state of repair. There are public rights of way to the north, south and east. The site lies within the West Midlands Green Belt.
8. National policy relating to the Green Belt is set out in section 9 of The National Planning Policy Framework (the Framework).⁴ Paragraph 79 of the Framework refers to the great importance that the Government attaches to Green Belts. It also states that: *'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.'* Policy CS.10 of the CS reflects the approach in the Framework, which says that new buildings should be regarded as inappropriate in the Green Belt subject to certain limited exceptions.
9. The additional bulk and physical presence of buildings, additions or other structures may affect openness which can also have a visual element. It is clear that the Council gave careful consideration to the effects on the openness

¹ Classes A-E of Part 1 and Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015

² Ref 15/03517/OUT

³ Planning Practice Guidance ID 21a-031-20140306

⁴ Published 2012

of the Green Belt by imposing conditions in the original outline permission, restricting ridge height and the cumulative gross floor space of the development. According to the Council Officer's report the site met the exception criteria of 'previously developed land' and the conditions were designed to ensure that there would be no greater impact on openness than the existing development on the site. Similarly, the reason given for the imposition of condition 12, in the original planning permission, refers to preventing potential harm to the Green Belt and cites section 9 of the Framework.

10. The Officer's report associated with the original planning application states in its 'conclusion and planning balance' that '*with conditions to limit the extent of the built form*' it is considered the final development is unlikely to have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
11. It seems to me, therefore, that conditions 10, 11 and 12 of the original outline permission were considered by the Council to be necessary and reasonable to protect the openness of the Green Belt. The PPG recognises that: '*When used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of development.*'⁵
12. The PPG also advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. Further, that area wide or blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.⁶
13. The extant outline permission for 8 dwellings is on a reasonably large site which is in the open countryside. If permitted development rights were exercised in the future, the individual and particularly the cumulative effect on the openness of the Green Belt could be significant. I also note the more generous allowances in respect of extensions to detached dwellings that are potentially available until 30 May 2019. Whilst the exercise of such permitted development rights is hypothetical, it is still a realistic possibility which it is reasonable and legitimate to take into account.
14. My attention has been drawn by the appellant to two appeal decisions.⁷ Whilst the site at Brambleberry Farmhouse was also located within the Green Belt and the linked appeals concerned the restriction of permitted development rights, it related to extensions and new outbuildings and structures in connection with an existing single dwelling. The appeal decision at Stone Breck concerned a proposal to convert an attached workshop to residential use ancillary to the existing house and to rebuild a garage and lean to workshop.
15. Those appeals, therefore, related to sites and proposals which are materially different in scale from the appeal before me concerning outline permission for 8 new detached dwellings. Furthermore, the Stone Breck site was not within the

⁵ Paragraph: 001 Reference ID: 21a-001-20140306

⁶ Paragraph: 017 Reference ID: 21a-017-20140306

⁷ APP/Q5300/A/14/2217664 (linked appeal ref: APP/Q5300/A/14/2217665) & APP/M9496/A/14/2219276

Green Belt but within a National park and Conservation Area. The Inspector recognises, in paragraph 9 of the decision, that permitted development rights are already restricted in National Parks and Conservation Areas and does not see why a further restriction is necessary.

16. Both appeals do, however, make the point that the GPDO does not exclude Green Belt land from its provisions. That issue is expanded upon in the Counsel's Opinion submitted by the appellant. However, the GPDO should not be viewed in isolation but in the policy context of a Framework which stresses the importance that the Government attaches to the Green Belt. Furthermore, in the knowledge that local planning authorities are able to impose conditions restricting permitted development rights in exceptional circumstances, taking into account the individual locations and characteristics of development sites and proposals. Also, with the awareness that an Article 4 direction under the GPDO could be imposed if a sizeable area was identified as appropriate for blanket protection. However, that approach would, of course, be a potentially blunt instrument which would remove the possibility of an assessment of whether such restrictions were necessary on individual sites on an exceptional basis.
17. The appeal relating to Cranleigh⁸, referred to by the Council, lends support to the restriction of permitted development rights in the Green Belt dependent on the particular circumstances of the site, the proposal and the background. That case concerned a replacement dwelling where permitted development rights were restricted to ensure that any additions were not disproportionate to the size of the original dwelling. That is similar in principle, though on a smaller scale, to the basis on which the outline permission in the appeal before me was given, where the mass of the buildings to be replaced was considered in relation to the proposed development and the relative effect on openness.
18. Although the Cranleigh appeal dates from 2012, it does refer to the Framework and the importance it places on protecting the Green Belt. Whilst Circular 11/95⁹ pre-dates the current PPG, according to paragraph 6 of the decision, it also advised that conditions restricting permitted development rights should only be imposed in exceptional circumstances. Therefore, I consider that the decision is relevant and demonstrates that there are circumstances where it may be appropriate to remove permitted development rights in the Green Belt.
19. Whilst the location of the site within the Green Belt may not, of itself, constitute exceptional circumstances, it is an important and relevant factor. The existing permission for 8 detached dwellings on relatively generous plots, according to the indicative site plan, provides a significant potential for future extensions, additional outbuildings and other structures. The site is surrounded mainly by open fields rather than within a setting of significant existing development and it is away from the main town. Consequently, the openness of the Green Belt could be significantly harmed by the exercise of permitted development rights.
20. The amount and nature of development permitted by Part 1 Class A, such as side or rear extensions, which could take place, would reduce the openness of the Green Belt, especially if exercised in relation to a number of the 8 detached dwellings. Permitted development under Class B, such as loft conversions

⁸ APP/C3620/A/12/2172043

⁹ The Use of Planning Conditions

including dormer windows could have a similar effect as could buildings and other development within the curtilage of the houses under Class E. Potentially, the erection of walls or fences, for example, of up to 2 metres in some cases under Part 2 Class A would also have a negative impact on openness.

21. However, the existing condition is broad and I do not consider that the type of roof alterations permitted by Part 1 Class C, such as the installation of roof-lights, or the building of porches, permitted by Class D, would be likely to have a significant effect on the openness of the Green Belt, even cumulatively across the site. To reflect that, I have included a slightly narrower condition, as it is not necessary or reasonable for it to restrict those classes of permitted development.
22. Therefore, taking the above factors into account, I conclude that a condition, albeit narrower, that has the effect of controlling development which could be inappropriate in the Green Belt and detract from its openness is necessary and reasonable.

Character and appearance

23. The site is located in the open countryside and in the Arden Special Landscape Area, one of four such areas of high landscape quality identified in Policy CS.12 of the CS. When the reserved matters relating to appearance, landscaping, layout and scale are dealt with and the permission for 8 residential dwellings is implemented, the site will develop a different character and appearance in its sensitive landscape setting.
24. It would also be visible from public rights of way in the area, particularly from public footpath SD203 to the south, which skirts the edge of the site. Whilst there is partial screening from vegetation around the site, such planting may not necessarily be a permanent feature and landscaping of the site itself is a reserved matter. Therefore, though alterations through permitted development would be within a residential site, it is outside the built-up area of Henley-in Arden and, given the extent of permitted additions, such changes, especially if cumulative, would potentially harm the character and appearance of the surrounding countryside which is visible to the wider public. I consider that there is a realistic possibility that such harm could occur.
25. The appellant suggests that the issue of the Arden Special Landscape Area (ASLA) has been newly introduced by the Council to justify the condition, a view supported in a further Counsel's opinion submitted by the appellant with their appeal. The ASLA is not specifically referred to in the reason for the condition given in the original planning permission. However, at that time the CS was still emerging and though some of the 'Core Strategy: Proposed Submission policies' were referred to, they did not form part of the development plan at that point. Such reasons are, by necessity, often relatively briefly stated, given that planning permissions can contain a number of conditions, in this case 14, as well as informative notes. In any event, the subsequent application to remove the condition had to be considered against the, by then, adopted CS, which included Policy CS.12 and Policy AS.10.
26. Restricting permitted development rights would help to protect a sensitive rural landscape and be in accord with CS Policies CS.5, CS.9, AS.10 and CS.12

which, amongst other things, are focussed on ensuring that development is sensitive to its setting and that landscape character is respected.

Conditions

27. As already explained, I am obliged to repeat the relevant conditions from the original planning permission, alongside the modified version of condition 12. Conditions relating to the reserved matters and time limits are required by statute. I have modified the time limit in relation to an application for the approval of the reserved matters in accordance with the PPG¹⁰, which advises that planning permission cannot be granted under section 73 to extend the time limit within which an application for approval of reserved matters must be made.
28. It is necessary for there to be a condition requiring proposals for the size, type, tenure and range of housing to be submitted to the local planning authority as part of any reserved matters application relating to layout and scale to ensure present and future housing needs are appropriately met. A condition requiring a construction method statement is required to prevent harm to the amenity of the area and it is in a pre-commencement form as the management of construction needs to be agreed prior to the development beginning.
29. It is necessary for there to be a condition regarding contamination to ensure that any risks to future users, neighbouring land and surrounding ecological systems are minimised. It is a pre-commencement condition to ensure that the needs of any protected species are considered. A condition regarding nesting boxes is necessary for nature conservation reasons and is a pre-commencement condition as it is important that suitable arrangements to be incorporated are agreed prior to construction. Conditions relating to the number of dwellings to be constructed, their maximum ridge height and cumulative gross floor space and a condition restricting permitted development rights are necessary for certainty and to prevent harm to the openness of the Green Belt and to the character and appearance of the countryside.
30. A condition regarding demolition works is necessary to protect and enhance nature conservation. Conditions regarding refuse, recycling and green waste arrangements along with water re-use are appropriate to ensure satisfactory domestic waste arrangement and to encourage the re-use of water resources.

Conclusions

31. As I have identified potential significant harm, particularly to the openness of the Green Belt but also to the open countryside, including the Arden Special Landscape Area, I consider that the exceptional circumstances, referred to in the PPG, exist and that it is necessary and reasonable for a condition restricting permitted development rights to be imposed, albeit in a modified form.
32. Whilst such a condition removes specific classes of permitted development rights, it does not preclude the possibility of such development but rather enables it to be assessed and controlled within a sensitive rural landscape.
33. For the reasons give above, I conclude that the condition in dispute is necessary and reasonable in respect of Part 1 Classes A, B, E and Part 2

¹⁰ Planning Practice Guidance ID 17a-014-20140306

Class A. However, with regard to Part 1 Classes C and D, it is not necessary and reasonable and so in that limited respect the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout and scale (hereinafter called the reserved matters) shall be submitted to and approved in writing by the district planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the district planning authority before the expiration of three years from 19 April 2016, the date of the original permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) Notwithstanding the indicative details of the application hereby approved, proposals for the size, type, tenure and range of housing to be developed, shall be submitted to the local planning authority for approval as part of any reserved matters application relating to layout and scale. Development shall thereafter be implemented only in strict accordance with the approved scheme.
- 5) No development shall take place, including any demolition works, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors
 - ii. loading and unloading of plant and materials
 - iii. storage of plant and materials used in constructing the development
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v. wheel washing facilities
 - vi. measures to control the emission of dust and dirt during construction
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works
- 6) a. No development shall take place until an investigation of the nature and extent of any contamination affecting the site has been carried out by a suitably qualified and experienced person, in accordance with a methodology based on a Phase I assessment and conceptual site model for the application site, in accordance with BS10175. The site investigation methodology, its results and the recommended remediation plan shall be deposited with the local planning authority before any development begins.

b. If, during the site investigation, any unacceptable contamination is found a further report specifying the measures to be taken to remediate the site shall be deposited with the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

c. If, during the course of development, any unacceptable contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be detailed in writing to the local planning authority and shall be implemented.

The permitted development shall not be brought into or continue in use unless and until all and any remediation works identified under sections a, b and c above have been carried out and a Validation or Post-Remediation Report produced by a suitably qualified and experienced person has been submitted to and approved in writing by the local planning authority.

- 7) Prior to the commencement of the development hereby approved, full details of four nesting provisions suitable for use by house sparrow or swift within the proposed dwellings shall be submitted to and approved in writing by the local planning authority. Thereafter the nesting provision shall be installed onsite and retained in accordance with the approved details.
- 8) The development hereby permitted shall be limited to a maximum number of eight dwellings.
- 9) The demolition of any buildings that may be used by nesting birds and the removal of any hedgerows, shrubs or trees shall not take place between 1 March and 30 September inclusive, unless a competent ecologist has undertaken a check of such features for active birds' nests immediately before works commence and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest onsite. Any such written confirmation shall be submitted to the local planning authority.
- 10) The development hereby permitted shall be restricted to a maximum ridge height of 7m when measured from the natural ground level.
- 11) The development hereby permitted shall be restricted to a maximum cumulative gross floor space of 1,500 square metres measured externally.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) no development covered by Part 1 Classes A, B and E and Part 2 Class A shall be carried out without planning permission granted by the district planning authority.
- 13) Prior to the first occupation of any of the dwellings hereby permitted, the developer shall provide 3 bins for the purposes of refuse, recycling and green waste for each of the dwellings, in accordance with the Council's bin specification.
- 14) No dwelling that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.