



Appeal Decision

Site visit made on 1 August 2017

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 1 September 2017

Appeal Ref: APP/A4710/W/17/3174097

Moorside House, Old Lindley Road, Outlane, Halifax HX4 9DF

- 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 David Lowe against the decision of Calderdale Metropolitan Borough Council.
 - The application Ref 16/01313/REM, dated 29 September 2016, was refused by notice dated 13 December 2016.
 - The application sought planning permission for the formation of basement and balcony above (Retrospective) without complying with a condition attached to planning permission Ref 14/00706/HSE, dated 5 August 2014.
 - The condition in dispute is No 1 which states that: *"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2008, (or any order revoking and re-enacting that order) no development falling within Classes A - E of Part 1 of Schedule 2 of the said order shall be carried out without the prior written permission of the Local Planning Authority."*
 - The reason given for the condition is: *"In order to protect the Green Belt from further development at the site, and in order to meet the criteria of section 9 (Green Belts) of the National Planning Policy Framework."*
-

Decision

1. The appeal is allowed and planning permission is granted for the formation of basement and balcony above (Retrospective) at Moorside House, Old Lindley Road, Outlane, Halifax HX4 9DF in accordance with the application Ref 16/01313/REM dated 29 September 2016 without compliance with condition No 1 previously imposed on planning permission Ref 14/00706/HSE dated 5 August 2014.

Procedural Matter

2. The Council's Decision Notice refers to Classes A –E of Part 1, Schedule 2 the Town and Country Planning (General Permitted Development) Order 2008. These provisions now fall within Classes A- E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). I have determined the appeal on the basis of the current legislation.

Main Issue

3. The main issue is whether the disputed condition is necessary and reasonable in the interests of preserving the openness and purpose of the Green Belt.

Reasons

4. The appeal property is located in the Green Belt and comprises a detached dwelling sited on a relatively steep hillside with substantial woodland to the west and north-west. The property has been subject to a number of previous extensions which are predominantly located to the north-west, which owing to the hillside position and surrounding woodland, are not readily visible in public views.
5. In considering the original application (Ref 14/00706/HSE) the Officer Report identified that the approximate additional percentage increase of all the extensions added to the original dwelling is 131%. The Council considered that although a large amount of extensions have been constructed onto the original dwelling they are within the existing curtilage where many are screened to a certain extent by the wooded area to the west and north-west. However, in granting planning permission for the development the Council suggests that the openness of the Green Belt required protection and accordingly the disputed condition only was imposed.
6. Paragraph 17 of the Government's Planning Practice Guidance (PPG) states 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. It also states that the 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. Furthermore, the National Planning Policy Framework (the Framework) does not provide any guidance relating to any restrictions within the GPDO in respect of development within the curtilage of dwelling house which is located within the Green Belt.
7. Given the steep topography of the curtilage of the dwelling I agree with the appellant that there is limited scope for any additional extensions at the property. In addition, as the property is largely visually self-contained and any increased floor area resulting from permitted development would be limited to single-storey built forms, I consider that the openness of the Green Belt would not be materially harmed. Although the appellant has not indicated what any future intentions would be if I were to allow the appeal, any harm caused would be largely hypothetical at this stage. In any event, I find no evidence that proves a demonstrable conflict with the guidance provided in the Framework in relation to development within the Green Belt.
8. Whilst I recognise the Council's concerns, I have no evidence in this case that demonstrates that there are exceptional circumstances that would meet the test in paragraph 17 of the PPG sufficient to justify the removal of permitted development rights. Furthermore, I have no evidence to define what the potential increase in development at the appeal site could translate to, or how it may harm openness or the purposes of including land within the Green Belt.
9. In the absence of Government advice to restrict permitted development rights within the Green Belt and taking into account the advice provided in the PPG, I

consider that there are no exceptional circumstances to justify the continued prohibition of permitted development rights at the appeal site. Therefore I find that the condition is neither necessary nor reasonable.

Conclusion

10. I therefore conclude that the special circumstances needed to justify imposing the condition do not exist in this case. As such, the imposition of the condition is unjustified. For the above reasons, based on the evidence before me and all other matters raised, I conclude that the appeal should be allowed and that the disputed condition should be removed.

Stephen Normington

INSPECTOR