



Appeal Decision

Site visit made on 9 July 2019

by Conor Rafferty LLB (Hons), AIEMA, Solicitor (Non-practising)

Decision by A U Ghafoor BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2019

Appeal Ref: APP/M3455/W/19/3226953

960 Lightwood Road, Lightwood, Stoke-on-Trent, ST3 7NF

- 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 as amended for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr L Sedzikowski against the decision of Stoke-on-Trent City Council
 - The application Ref 63503 dated 14 January 2019, was refused by notice dated 4 April 2019
 - The application sought planning permission for the change of use of existing stables to form one residential dwelling without complying with a condition attached to planning permission 54405.
 - The condition in dispute is No 5, which states that: *Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 or any order revoking and re-enacting that Order, with or without modification, no buildings or extensions shall be erected within the curtilage of the dwelling hereby approved without the prior consent of the Local Planning Authority.*
 - The reason given for the condition is: *In order to protect the openness of the Green Belt.*
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of stables to form one residential dwelling at 960 Lightwood Road, Lightwood, Stoke On Trent, ST3 7NF in accordance with the application Ref 63503 dated 14 January 2019, without compliance with condition No 5 previously imposed on planning permission Ref 54405 dated 24 January 2013, subject to the conditions annexed to this decision.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. No specific policy relating to Green Belt has been provided by either party, and the Council's decision notice refers only to section 13 of the National Planning Policy Framework (the Framework). The proposal has therefore been considered relative to the Framework in this recommendation.

Main Issue

4. The main issue is whether the disputed conditions are reasonable and necessary with regard to the effect of the development on the openness of the Green Belt.

Reasons for the Recommendation

5. The appeal site is located within the Green Belt, in a countryside setting towards the southern end of Lightwood Road. The immediate surroundings are predominantly open and undulating fields with buildings situated immediately to the west of the site and other groupings of residential dwellings visible. As Lightwood Road continues to the north these dwellings become more frequent, but the area retains a rural feel.
6. Planning permission was granted for the change of use of stables on the site to form one residential dwelling, subject to numerous conditions. While this has since been implemented, the appeal seeks permission for the change of use without complying with condition 5. This condition revoked permitted development rights such that no buildings or extensions shall be erected within the curtilage of the dwelling without the prior consent of the Council.
7. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in Green Belt, unless it falls within certain listed exceptions. Paragraph 146 of the Framework sets out other forms of development which are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. This includes, at point (d), the re-use of buildings provided that they are of permanent and substantial construction. The Council granted planning permission on this basis. Having regard to the evidence submitted there is no reason to take a different view. Consequently, the change of use from stables to form one residential dwelling as permitted by planning permission 54405 is not inappropriate development in the Green Belt.
8. Paragraph 55 of the Framework states that "*planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects*". The disputed condition appears to comply with paragraph 55 of the NPPF insofar as it is enforceable, relevant to the development to be permitted and relevant to planning.
9. With regards to the necessity and reasonableness of the disputed condition, the Council has stated that this condition ensures extensions and outbuildings cannot be constructed without first requiring permission, so as to avoid uncontrolled extensions and alterations. Given the location of the site within the Green Belt, the Council argues that removal of the condition could result in further development contrary to guidance set out the Framework which aims to safeguard the Green Belt from encroachment.
10. No evidence has been submitted by either party as to the extent to which permitted development rights are to be relied upon to further develop the site. As the Council has suggested, removing the condition has the potential to result in disproportionate additions over and above the size of the original building. Comments have also been received from neighbouring properties that the footprint of the dwelling has increased by 25% since its purchase by the appellant. However, the extent of further development would be constrained by the site itself and the physical criteria set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order), which although sizeable is relatively self-contained with limited space to the rear of the dwelling for further additions, restricting the available area for the application of permitted development rights. Similarly, no detailed evidence has been submitted to justify that the removal of permitted development rights in this instance would be necessary to prevent harm to the openness of the Green Belt or the other purposes of including land within it, including safeguarding from encroachment.

11. The Planning Practice Guidance (the 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. The position of the appeal site within the Green Belt is not, in itself, an exceptional circumstance in this instance, and no other such circumstances have been raised by the Council. Therefore, in the light of the provisions of the NPPF and PPG regarding imposition of conditions restricting the future use of permitted development rights, there are no exceptional circumstances to justify the removal of permitted development rights at the appeal site.
12. With regards to the precision of the disputed conditions, the PPG further states at paragraph 017 that the scope of conditions removing permitted development rights needs to be precisely defined by reference to the relevant provisions in the Order, so that it is clear exactly which rights have been limited or withdrawn¹. It continues that 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. It is noted that the disputed condition has not been drafted with reference to the relevant provisions of the Order.
13. For the reasons given above, condition no 5 attached to planning permission 54405 is therefore not necessary or reasonable in the interests of the effect of the development on the openness of the Green Belt, and, furthermore, lacks precision. It therefore fails to comply with paragraph 55 of the NPPF in this regard.

Conditions

14. The guidance in the PPG 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 no information has been submitted about the status of the other conditions imposed on the original planning permission, all conditions that are considered to remain relevant are shall be imposed. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
15. Having regard to the above, condition 5 of planning permission Ref 54405 does not meet the requirements of paragraph 55 of the Framework. I therefore recommend the grant of a new planning permission that does not include this condition and that re-numbers the other conditions accordingly.

Conclusion and Recommendation

16. Having had regard to all matters raised, I recommend that the appeal should be allowed.

C Rafferty

APPEAL PLANNING OFFICER

Inspector's Decision

17. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I too agree that the appeal should be allowed subject to conditions.

A U Ghafoor

INSPECTOR

¹ Reference ID: 21a-017-20140306

Appendix to appeal ref: APP/M3455/W/19/3226953

1. The development, hereby permitted, shall be begun not later than three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Unnumbered drawing - Proposed Elevations received 21 January 2013 Unnumbered drawing - Proposed Floor Layout received 21 January 2013 Unnumbered drawing - Proposed 1:200 Site Plan (excluding floor layout) received 3 December 2012
3. No development, including site works, shall commence until the existing tree shown on the approved 1:200 site plan, has been protected, in accordance with details that shall first be submitted and approved in writing by the Local Planning Authority. The tree shall be protected in the agreed manner for the duration of building operations on the application site. Within the areas agreed to be protected, the existing ground level shall neither be raised nor lowered, and no material or temporary building or surplus soil of any kind shall be placed or stored thereon. If any trenches for services are required in the protected area, they shall be excavated and back-filled by hand and any tree roots encountered with a diameter of 5cm or more shall be left un-severed.
4. Prior to the occupation of the residential dwelling hereby approved, windows in the existing south east elevation of the ancillary residential accommodation to the dwelling known as Rough Close Farm, 962 Lightwood Road, as shown on the approved site plan, shall be removed and the elevation made good to the satisfaction of the Local Planning Authority.
5. No development, excluding site works, shall take place until a scheme for the treatment of the application site boundaries has been submitted to, and agreed in writing by, the Local Planning Authority. The approved details shall be incorporated prior to occupation of the dwelling hereby permitted.
6. The external facing materials to be used in the construction of the new dwelling hereby permitted shall match as closely as possible those of the existing building.
7. Prior to commencement of the development hereby approved, drainage details incorporating sustainable drainage principles, where practicable, shall be submitted to, and approved in writing by, the Local Planning Authority and implemented in accordance with the approved details prior to the development being completed and occupied.
8. Prior to commencement of the development hereby approved, excluding site works, precise details of the parking, access and turning areas, shall be submitted to, and approved in writing by, the Local Planning Authority. Such parking, turning and access areas shall be sustainably surfaced in a suitable material where practicable and implemented prior to occupation of the dwelling hereby approved and retained for such purposes in perpetuity.