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# Appeal Decision

Site visit made on 9 October 2019

**by E Griffin LLB Hons**

**an Inspector appointed by the Secretary of State**

**Decision date: 06 November 2019**

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**Appeal Ref: APP/P1805/W/19/3228824**

**Orchard Cottage, Rowney Green Lane, Rowney Green B48 7QS**

- 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 McMullan against the decision of Bromsgrove District Council.
  - The application Ref 19/00050/FUL dated 4 May 2018 was refused by notice dated 6 March 2019.
  - The application sought planning permission for a replacement dwelling without complying with condition 4 attached to planning permission Ref 09/0357 dated 27 July 2009.
  - The condition in dispute is No 4 which states that: *'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking and re-enacting that Order) no development included within Schedule 2 Part 1, Classes A to E shall be carried out without the prior approval of the local planning authority to an application in that behalf'.*
  - The reason given for the condition is: *'To protect the visual amenity of the area in accordance with policy DS13 of the Bromsgrove District Local Plan January 2004 and policy CTC.1 of the Worcestershire County Structure Plan 2001'.*
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## Decision

1. The appeal is dismissed.

## Background and Main Issue

2. Planning permission was originally granted for a replacement dwelling at Orchard Cottage on the 13 October 2006 (the 2006 permission). A further planning permission ref 09/0357 was granted on the 27 July 2009 (the 2009 permission). Both permissions had conditions attached which removed permitted development rights and the later 2009 permission was implemented.
3. Condition 4 of the 2009 planning permission removed permitted development rights under Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 and subsequent amendment orders, for any development included within Class A, B,C,D and E, Part (1) Schedule (2) without a prior application to the Council.
4. The Council considers that the condition is required to protect the openness and visual amenity in this Green Belt location by removing development that could be implemented under permitted development rights.

5. The main issue is therefore whether the condition is reasonable and necessary to preserve the visual amenities and openness of the appeal site in the Green Belt.

### **Reasons**

6. Orchard Cottage is a two storey detached dwelling within a spacious plot on a slight bend at the end of a run of other dwellings along Rowney Green Lane. Apart from Corner Hollow next door and dwellings opposite which are set back from the road, the appeal dwelling has open countryside on all other sides. As the appeal site slopes down away from the road, there are expansive views from the appeal dwelling of the surrounding countryside.
7. The original application for a replacement dwelling in 2006 included a detached garage as well as a dwelling but the Committee report states that the detached garage was removed and amended plans were submitted. The floorspace of the replacement dwelling without the detached garage was just under a 40% increase compared to the floorspace of the dwelling that it replaced. The relevant policy at the time referred to a replacement dwelling being of a similar scale. The parties agree that the only change to the 2009 permission was a change to the siting of the appeal dwelling. The Council considers that it was appropriate in both 2006 and 2009 to impose a condition removing permitted development rights so that any further built development would be assessed against the relevant local and national policies. The Council considered that imposing the condition was preferable to refusing the application.
8. Policy BDP4 of the Bromsgrove District Plan 2011-2030 Adopted January 2017 (the District Plan) sets out circumstances where planning permission can be granted in the Green Belt. The wording refers to extensions up to a 40% increase provided that this scale of development has no adverse impact upon the openness of the Green Belt.
9. The appellant considers that removal of the condition would not undermine the aims or the objectives of local or Green Belt policy. However, to remove the condition that restricts permitted development rights would potentially allow for extensions to the appeal dwelling without control and such development could be inappropriate development and therefore harmful and contrary to Policy BD4 of the District Plan as no assessment of openness would occur.
10. The appellant maintains that as the appeal dwelling already impacts upon the openness of the Green Belt then the limited kind of development authorised by permitted development would not impact openness to the extent that it would be harmful. However, the range of permitted development is not necessarily limited. It is also not the case that development would be limited to a physical attachment to the appeal dwelling.
11. Case law is referred to by the appellant with regard to assessing openness in the Green Belt. Whilst there may be some instances where there is no impact on openness, such as the re-use of buildings, proposals which increase the amount of built development are likely to harm the openness of the Green Belt. Paragraph 144 of the National Planning Policy Framework states that local planning authorities should ensure that substantial weight is given to any harm in the Green Belt. It cannot therefore be assumed, in the absence of any details of what is proposed, that the kind of development allowed under permitted development rights would not harm the openness of the Green Belt.

12. The appellant has drawn my attention to appeal decisions at Brambleberry Farmhouse<sup>1</sup> where the Inspector allowed appeals relating to removal of a similar condition. In that case, the Inspector found that as the appeal site was on the periphery of a location where much commercial activity took place, the openness of the Green Belt would not be materially harmed by removing the condition. The circumstances of any application will always need to be assessed on its own facts and merits, particularly with regard to the nature and location of the appeal site. The Brambleberry decisions are not, therefore, comparable to the appeal proposal before me.
13. The appellant has provided comments upon an appeal decision at Orchard House<sup>2</sup> which related to a replacement dwelling and the removal of permitted development rights. Whilst each case must be assessed on its own merits, the appellant considers that the Inspector misinterpreted Policy BDP4. However, the Inspector did consider that inappropriate development could arise from extension proposals which would be contrary to Policy BDP4.
14. Reference is made by the appellant to Policy BDP2 of the District Plan which refers to appropriate development being limited to infill plots within the village boundary. The appellant considers that the appeal site should be within rather than just outside the village boundary. In view of its location, without built development on both sides, I do not consider it likely that the appeal site would constitute infill. Nevertheless, the appeal site is within the Green Belt and subject to the more restrictive Green Belt policies.
15. Paragraph 17 of the National Planning Policy Guidance states "Conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances." I agree that permitted development rights should not be withdrawn as a matter of course in the Green Belt and that each case has to be assessed upon its own particular facts. However, I do consider in light of the evidence before me that it is appropriate for the condition to remain.
16. For the reasons given, I therefore conclude that the condition is reasonable and necessary to preserve the visual amenities and openness of the appeal site in the Green Belt. The condition is consistent with Policy BDP4 of the District Plan and the Framework in seeking to ensure that inappropriate development within the Green Belt does not occur. Although referred to in the Council's decision notice, I do find Policy BD1 of the District Plan to be less relevant than Policy BDP4 of the District Plan which specifically deals with the Green Belt.

## **Conclusion**

17. For the reasons given, the appeal is dismissed.

*E. Griffin*

INSPECTOR

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<sup>1</sup> APP/Q5300/A/14/2217664/2217665

<sup>2</sup> APP/P1805/W/18/3194893