



Appeal Decision

Site visit made on 21 January 2020

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 February 2020

Appeal Ref: APP/J1915/W/19/3240095

Edgewood Farm, Broxbourne Common, Broxbourne EN10 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 David Felton against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/0693/VAR, dated 28 March 2019, was refused by notice dated 4 June 2019.
 - The application sought planning permission for replacement dwelling house with basement without complying with a condition attached to planning permission Ref 3/11/1170/FP, dated 12 October 2011.
 - The condition in dispute is No 9 which states that: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development Order), 1995 the provision within the curtilage of the dwelling of any building, enclosure or swimming pool as described in Schedule 2, Part 1, Class E of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.*
 - The reason given for the condition is: *To ensure the Local Planning Authority retains control over any future development as specified in the condition in the interests of amenity and in accordance with policy ENV9 of the East Herts Local Plan Second Review April 2007.*
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The disputed condition refers to specific provisions of the Town and Country Planning (General Permitted Development) Order 1995, which was revoked when the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) was made. However, the GPDO is similar to the previous Order in terms of the development that is permitted within the curtilage of a dwellinghouse. Therefore, no substantive changes have been made to the provisions of Schedule 2, Part 1, Class E which are directly relevant to the determination of this appeal.
3. It was apparent upon inspection, that the original dwelling (for which planning permission¹ to replace was granted in 2011) was still in-situ at the site. This is despite a planning condition being attached to the 2011 permission that explicitly requires that it be removed within 3 months dated from the

¹ 3/11/1170/FP

replacement dwelling's first occupation. I have noted from the site's planning history that attempts have been made outside of this appeal to seek to regularise the building's continued presence on-site. Nevertheless, I shall proceed to consider the merits of the proposal before me in the context of the terms upon which planning permission for the replacement dwelling was granted.

Main Issue

4. The main issue is whether or not the disputed condition is reasonable and necessary in the interests of protecting the Green Belt and its openness.

Reasons

5. The appeal site is in the Green Belt and contains a replacement dwelling. The site is made up of the dwelling's generously sized curtilage, as defined with a red line on the overall site plan². It comprises part of a wider area of land (the wider site) that also falls under the appellant's control and that contains various paddocked areas, sheds and facilities that I understand relate to an existing horse breeding business. The appeal site's garden area is, for much of its extent, clear of built development. An exception to this is a tennis court with fenced surrounds, which was granted planning permission³ separately in 2016.
6. As set out in the National Planning Policy Framework (February 2019) (the Framework), conditions restricting the future use of permitted development rights should only be used where there is clear justification to do so. Planning Practice Guidance (the Guidance) confirms that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. Indeed, the Government has already placed limitations and restrictions upon permitted buildings incidental to the enjoyment of a dwellinghouse, as set out under Class E of the GPDO.
7. In this case the removal of the disputed condition would allow for buildings to be constructed up to a limit, in ground coverage terms, of 50% of the replacement dwelling's curtilage (when factoring out the replacement dwelling's own ground area). Considering the large size of the curtilage area in question, it is apparent that the requested removal of the disputed condition would offer a range of opportunities for single-storey buildings, as well as enclosures and swimming pools, to be constructed across various areas of the appeal site.
8. As set out in the Framework, 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, and these do not alter because of the presence of existing developments in a particular area.
9. Additional development incidental to the enjoyment of the replacement dwelling, in accordance with the limitations set out in Class E of the GPDO, would not be anticipated to have a far-reaching visual impact, particularly when noting the various planting and boundary treatment that is already in place to the perimeters of the appeal site and wider site. However, it is important to note that openness in terms of the Green Belt has a spatial aspect

² 11-1067-101 D approved under planning permission 3/11/1170/FP

³ 3/16/1511/HH

as well as a visual aspect. If built up to (or close to) the 50% ground coverage threshold referenced above, the cumulative volume of additional buildings would inevitably lead to a distinct loss of openness in spatial terms.

10. It is apparent from the site's recent planning history that planning permission has, on two occasions, been sought for a detached gym at the site. Whilst these applications were ultimately unsuccessful, this option to apply separately for development remains open to the appellant whereby each case would be considered on its own individual merits. Indeed, it is apparent that the existing tennis court was granted planning permission on this basis. It is likely that, with respect to any intended new buildings, very special circumstances would need to exist and be clearly demonstrated on a case-by-case basis. However, noting the site's eminent capacity to accommodate significant additional built form and the sensitivities of its Green Belt location, this appears to me to represent a reasonable and sensible arrangement.
11. The appellant has referred to other sites where permitted development rights have not been removed. However, the full details of these other sites have not been provided and it is unclear from the evidence before me whether any of them are comparable to the appeal site in terms of their size and composition. In any event, each case must be considered on its own individual merits. I also note here that a blanket removal of rights has not taken place, instead the restrictions imposed by the disputed condition fall under a specific class of the GPDO (as do those imposed under Condition 8 of the same 2011 planning permission) and relate purely to the appeal site.
12. For the above reasons, I conclude that there is clear justification to restrict the future use of permitted development rights falling under Class E of the GPDO and that the disputed condition is reasonable and necessary in the interests of protecting the Green Belt and its openness. The proposal conflicts with Policy GBR1 of the East Herts District Plan (October 2018) and with the Framework in so far as these policies recognise that openness is an essential characteristic of Green Belts.

Other Matters

13. I acknowledge that the site is not located within a high-risk flood zone, does not make up part of a Site of Special Scientific Interest and is not thought to be contaminated. I am also unaware of any objections from nearby residents and am satisfied that the living conditions of existing occupiers in the locality would not be adversely affected by the proposal. However, these circumstances do not alter my findings with respect to the main issue in this appeal.
14. I note that reference has been made in a supporting document to several appeal decisions on sites elsewhere where the reasonableness and necessity of conditions withdrawing the future use of permitted development were under consideration. However, all of the decisions referenced pertain to other areas of the country, some relate to sites not in Green Belt locations and none of them are particularly recent such that they were not determined in the context of the most recent and up-to-date versions of the Framework and the Guidance. They are thus of limited relevance to my considerations here. In any event, I have determined the appeal in accordance with the specific site circumstances to hand.

Conclusion

15. For the above reasons, the appeal is dismissed and the disputed condition is retained in its current form.

Andrew Smith

INSPECTOR